

## **CHAPTER 33-33-04**

### **FOOD CODE**

Section	
33-33-04-01	Definitions
33-33-04-01.1	Intent - Scope
33-33-04-02	General Care of Food Supplies
33-33-04-02.1	Additional Safeguards
33-33-04-03	Special Requirements
33-33-04-03.1	Shucked Shellfish - Packaging and Identification
33-33-04-03.2	Shellstock Identification
33-33-04-03.3	Shellstock - Condition
33-33-04-03.4	Molluscan Shellfish - Original Container
33-33-04-03.5	Shellstock - Maintaining Identification
33-33-04-04	General Food Protection
33-33-04-04.1	Packaged and Unpackaged Food - Separation, Packaging, and Segregation
33-33-04-04.2	Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food
33-33-04-04.3	Food Labels
33-33-04-05	Emergency Occurrences
33-33-04-06	General Food Storage
33-33-04-07	Potentially Hazardous Foods - Hot and Cold Holding
33-33-04-07.1	Ready-to-Eat, Potentially Hazardous Food - Date Marking
33-33-04-07.2	Ready-to-Eat, Potentially Hazardous Food - Disposition
33-33-04-07.3	Time as a Public Health Control
33-33-04-07.4	Consumption of Animal Foods That Are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens
33-33-04-07.5	Cooling
33-33-04-07.6	Cooling Methods
33-33-04-08	Hot and Cold Storage
33-33-04-09	General Food Preparation
33-33-04-09.1	Preventing Contamination When Tasting
33-33-04-10	Washing Raw Fruits and Vegetables
33-33-04-11	Cooking Raw Animal Foods
33-33-04-11.1	Minimum Food Temperature and Holding Time [Repealed]
33-33-04-11.2	Oven Parameters Required for Destruction of Pathogens [Repealed]
33-33-04-11.3	Minimum Holding Times Required at Specified Temperatures [Repealed]
33-33-04-11.4	Microwave Cooking
33-33-04-11.5	Parasite Destruction
33-33-04-11.6	Plant Food Cooking for Hot Holding
33-33-04-11.7	Records - Creation and Retention
33-33-04-11.8	Re-serving Cooked and Refrigerated Food
33-33-04-12	Milk Products - Pasteurized
33-33-04-13	Egg Products - Pasteurized
33-33-04-14	Reheating for Hot Holding
33-33-04-15	Nondairy Products

33-33-04-16	Product Thermometers [Repealed]
33-33-04-17	Thawing Potentially Hazardous Foods
33-33-04-18	Food Display and Service of Potentially Hazardous Foods
33-33-04-18.1	Variance Requirement
33-33-04-18.2	Reduced Oxygen Packaging - Criteria
33-33-04-19	Milk and Cream Dispensing
33-33-04-19.1	Dispensing Equipment, Protection of Equipment, and Food
33-33-04-19.2	Molluscan Shellfish Tanks
33-33-04-20	Nondairy Product Dispensing
33-33-04-21	Condiment Dispensing
33-33-04-21.1	Vending Machine Dispensing
33-33-04-21.2	Vending Machine - Automatic Shutoff
33-33-04-22	Ice Dispensing
33-33-04-23	Dispensing Utensils
33-33-04-24	Re-Serving
33-33-04-25	Food Display
33-33-04-25.1	Consumer Self-Service Operations
33-33-04-26	Reuse of Tableware
33-33-04-27	General Food Transportation
33-33-04-27.1	Management and Personnel
33-33-04-27.2	Demonstration of Knowledge
33-33-04-28	Employee Health
33-33-04-28.1	Employee Exclusions and Restrictions
33-33-04-28.2	Removal of Exclusions and Restrictions
33-33-04-28.3	Responsibility of a Food Employee or an Applicant to Report to the Person in Charge
33-33-04-28.4	Reporting by the Person in Charge
33-33-04-28.5	Obtaining Information - Personal History of Illness, Medical Examination, and Specimen Analysis
33-33-04-28.6	Restriction or Exclusion of Food Employee or Summary Suspension of License
33-33-04-28.7	Restriction or Exclusion Order - Warning or Hearing Not Required - Information Required in Order
33-33-04-28.8	Release of Employee From Restriction or Exclusion
33-33-04-29	General Personal Cleanliness
33-33-04-29.1	Preventing Contamination From Hands - When to Wash
33-33-04-29.2	Hand Sanitizer
33-33-04-29.3	Where to Wash
33-33-04-29.4	Fingernail Maintenance
33-33-04-30	General Clothing and Jewelry
33-33-04-31	General Employee Practices
33-33-04-31.1	Hair Restraints
33-33-04-32	General Equipment and Utensils Materials
33-33-04-33	Solder and Pewter Alloys
33-33-04-34	Wood
33-33-04-34.1	Cutting Surfaces
33-33-04-35	Plastics
33-33-04-35.1	Sponges
33-33-04-35.2	Nonstick Coatings

33-33-04-36	Mollusk and Crustacea Shells
33-33-04-36.1	Slash-Resistant Gloves
33-33-04-37	Single-Service Articles
33-33-04-38	General Design and Fabrication
33-33-04-39	Accessibility
33-33-04-40	In-Place Cleaning
33-33-04-41	Pressure Spray Cleaning
33-33-04-42	Thermometers - Food
33-33-04-42.1	Thermometers - Ambient Air and Water
33-33-04-43	Nonfood-Contact Surfaces
33-33-04-44	Ventilation Hoods
33-33-04-45	Existing Equipment
33-33-04-46	General Equipment Installation and Location
33-33-04-47	Table-Mounted Equipment
33-33-04-48	Floor-Mounted Equipment
33-33-04-49	Aisles and Working Spaces
33-33-04-50	Cleaning Frequency of Equipment and Utensils Cleaning and Sanitizing
33-33-04-50.1	Returnables - Cleaning and Refilling
33-33-04-51	Wiping Cloths and Working Containers - Use Limitation
33-33-04-52	Manual Warewashing - Sink Compartment Requirements
33-33-04-52.1	Warewashing Equipment - Cleaning Frequency
33-33-04-52.2	Warewashing Machines - Manufacturers' Operating Instructions
33-33-04-52.3	Warewashing Sinks - Use Limitations
33-33-04-52.4	Warewashing Equipment - Cleaning Agents
33-33-04-52.5	Warewashing Equipment - Clean Solutions
33-33-04-52.6	Manual Warewashing Equipment - Wash Solution Temperature
33-33-04-53	Mechanical Warewashing Equipment - Wash Solution Temperature
33-33-04-53.1	Manual Warewashing Equipment - Hot Water Sanitization Temperatures
33-33-04-53.2	Mechanical Warewashing Equipment - Hot Water Sanitization Temperatures
33-33-04-53.3	Mechanical Warewashing Equipment - Sanitization Pressure
33-33-04-53.4	Manual and Mechanical Warewashing Equipment - Chemical Sanitization - Temperature, pH, Concentration, and Hardness
33-33-04-53.5	Warewashing Equipment - Determining Chemical Sanitizer Concentration
33-33-04-53.6	Hot Water and Chemical
33-33-04-54	Drying
33-33-04-55	Handling of Equipment and Utensil Storage
33-33-04-56	Storage
33-33-04-56.1	Preset Tableware
33-33-04-57	Single-Service Articles
33-33-04-58	Prohibited Storage Areas
33-33-04-59	General Water Supplies

33-33-04-59.1	System Flushing and Disinfection
33-33-04-60	Transportation
33-33-04-61	Bottled Water
33-33-04-62	Water Under Pressure
33-33-04-62.1	Water Reservoir of Fogging Devices
33-33-04-63	Steam
33-33-04-64	General Sewage
33-33-04-65	General Plumbing
33-33-04-66	Nonpotable Water System [Repealed]
33-33-04-67	Backflow
33-33-04-68	Grease Traps
33-33-04-69	Garbage Grinders
33-33-04-70	Drains
33-33-04-71	Toilet Facility Installation
33-33-04-72	Toilet Design
33-33-04-73	Toilet Rooms
33-33-04-74	Toilet Fixtures
33-33-04-75	Handsink Facility Installation
33-33-04-76	Handsink Faucets
33-33-04-77	Handsink Supplies
33-33-04-78	Handsink Maintenance
33-33-04-79	Garbage and Refuse Containers
33-33-04-80	Storage
33-33-04-81	Disposal
33-33-04-82	General Insect and Rodent Control
33-33-04-83	Openings
33-33-04-84	Construction and Maintenance of Floor Construction
33-33-04-85	Floor Carpeting
33-33-04-86	Prohibited Floor Covering
33-33-04-87	Floor Drains
33-33-04-88	Mats and Duckboards
33-33-04-89	Floor Junctures
33-33-04-90	Utility Line Installation
33-33-04-91	Wall and Ceiling Maintenance
33-33-04-92	Construction
33-33-04-93	Exposed Construction
33-33-04-94	Utility Line Installation
33-33-04-95	Attachments
33-33-04-96	Covering Material Installation
33-33-04-97	General Cleaning Physical Facilities
33-33-04-98	Utility Sinks
33-33-04-99	General Lighting
33-33-04-100	Protective Shielding
33-33-04-101	General Ventilation
33-33-04-102	Special Ventilation
33-33-04-103	Dressing Rooms or Areas
33-33-04-104	Locker Area
33-33-04-105	Poisonous or Toxic Materials Permitted
33-33-04-106	Labeling of Materials

33-33-04-107	Storage of Materials
33-33-04-108	Use of Materials
33-33-04-109	Personal Medications
33-33-04-110	First-Aid Supplies
33-33-04-111	General Premises
33-33-04-112	Living Areas
33-33-04-113	Laundry Facilities
33-33-04-114	Linen and Clothes Storage
33-33-04-115	Cleaning Equipment Storage
33-33-04-116	Prohibiting Animals
33-33-04-117	General Mobile Food Service
33-33-04-118	General Mobile Food Service - Restricted Operations
33-33-04-119	Single-Service Articles
33-33-04-120	Water System
33-33-04-121	Waste Retention
33-33-04-122	Base of Commissary Operations
33-33-04-123	Serving Area and Operations
33-33-04-124	Servicing Operations
33-33-04-125	Temporary Food Establishment
33-33-04-126	Temporary Food Establishment - Restricted Operations
33-33-04-127	Ice
33-33-04-128	Equipment
33-33-04-129	Single-Service Articles
33-33-04-130	Water
33-33-04-131	Wet Storage
33-33-04-132	Waste
33-33-04-133	Handwashing
33-33-04-134	Floors
33-33-04-135	Walls and Ceilings of Food Preparation Areas
33-33-04-136	Inspection Report Form FD 2420 [Repealed]
33-33-04-137	Submission of Plans
33-33-04-138	Preoperational Inspection
33-33-04-138.1	Routine Inspections
33-33-04-139	Modifications and Waivers
33-33-04-140	Documentation of Proposed Variance and Justification
33-33-04-141	Conformance With Approved Procedures
33-33-04-142	When an HACCP Plan Is Required
33-33-04-143	Contents of an HACCP Plan

**33-33-04-01. Definitions.** For the purpose of this chapter:

1. "Additive" has the meaning stated in the federal Food, Drug, and Cosmetic Act, subsection 201(s) and 21 CFR 170 and "color additive" has the meaning stated in the federal Food, Drug, and Cosmetic Act, subsection 201(t) and 21 CFR 70.
2. "Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

3. "a<sub>w</sub>" means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a<sub>w</sub>.
4. "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the national shellfish sanitation program.
5. "CFR" or "Code of Federal Regulations" means the compilation of the general and permanent rules published in the federal register by the executive departments and agencies of the federal government which is published annually by the United States government printing office; and contains food and drug administration rules in 21 CFR, United States department of agriculture rules in 7 CFR and 9 CFR, and EPA rules in 40 CFR.
6. "Commingle" means:
  - a. To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or
  - b. To combine shucked shellfish from containers with different container codes or different shucking dates.
7. "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing and includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.
8. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.
9. "Common dining area" means a central location in a group residence where people gather to eat at mealtime. Common dining area does not apply to a kitchenette or dining area located within a resident's private living quarters.
10. "Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis or appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.
11. "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of

a food establishment or food processing plant, and does not offer the food for resale.

12. "Corrosion-resistant materials" means those materials that maintain acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, normal use of cleaning compounds and sanitizing solutions, and other conditions-of-use environment.
13. "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
14. "Critical item" means a provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.
15. "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
16. "Department" means the state department of health or its designated agent.
17. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be removed effectively by normal cleaning methods.
18. "Easily movable" means weighing thirty pounds [14 kilograms] or less; mounted on casters, gliders, or rollers; or provided with a mechanical means requiring no more than thirty pounds [14 kilograms] of force to safely tilt a unit of equipment for cleaning; and having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.
19. "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea.
20. "Employee" means the licenseholder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
21. "EPA" means the United States environmental protection agency.
22. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing

machines, steamtables, and similar items other than utensils, used in the operation of a food establishment.

23. "Exclude" means to prevent a person from working as a food employee or entering a food establishment except for those areas open to the general public.
24. "Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.
25. "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption, or chewing gum.
26. "Foodborne disease outbreak" means an incident in which two or more persons experience a similar illness after ingestion of a common food and epidemiological analysis implicates the food as the source of the illness. Foodborne disease outbreak includes a single case of illness such as one person ill from botulism or chemical poisoning.
27. "Food-contact surface" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.
28. "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
29. "Food establishment":
  - a. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:
    - (1) Such as a restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, conveyance used to transport people, institution, or food bank; and
    - (2) That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.
  - b. "Food establishment" includes:



- (1) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the department; and
- (2) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

c. "Food establishment" does not include:

- (1) An establishment that offers only prepackaged foods that are not potentially hazardous;
- (2) A produce stand that only offers whole, uncut fresh fruits and vegetables;
- (3) A food processing plant;
- (4) A kitchen in a private home if the food is prepared for sale or service at a function such as a religious or charitable organization's bake sale;
- (5) A private home that receives catered or home-delivered food.

- 30. "Food processing plant" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food establishment, retail food store, or commissary operation.
- 31. "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, or goat in 9 CFR subchapter A - mandatory meat inspection, part 301, as poultry in 9 CFR subchapter 9C - mandatory poultry products inspection, part 381, or as fish as defined in subparagraph 1-201.10(B)(26). Game animal includes animals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, bear, and muskrat; aquatic and nonaquatic birds such as wild ducks and geese, quail, and pheasant; nonaquatic reptiles such as rattlesnakes; aquatic mammals; exotic animals as defined in 9 CFR subchapter A - animal welfare, part 1, such as lion, tiger, leopard, elephant, camel, antelope, anteater, kangaroo, and water buffalo; and species of foreign domestic cattle, such as ankole, gayal, and yak.
- 32. "Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals. Group residence includes a domicile for unrelated persons such as a retirement home or long-term health care facility.

33. "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis critical control point principles developed by the national advisory committee on microbiological criteria for foods.
34. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
35. "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.
36. "Highly susceptible population" means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.
37. "Injected" means manipulating a meat so that infectious or toxigenic micro-organisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting", "pinning", or "stitch pumping".
38. "Kitchenware" means food preparation and storage utensils.
39. "Law" includes applicable federal, state, and local statutes, ordinances, and regulations.
40. "License" means the document issued by the department that authorizes a person to operate a food establishment.
41. "Licenseholder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and possesses a valid license to operate a food establishment.
42. "Linens" means fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.
43. "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish and poultry, that is offered for human consumption.
44. "Mobile food unit" means a vehicle-mounted food establishment designed to be readily movable.

45. "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.
46. "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. Packaged does not include a wrapper, carryout box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
47. "Person" includes any individual, partnership, corporation, association, or other legal entity.
48. "Person in charge" means the individual present in a food establishment who is responsible for the operation at the time of inspection.
49. "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medications; first-aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.
50. "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and seven indicate acidity and values between seven and fourteen indicate alkalinity. The value for pure distilled water is seven, which is considered neutral.
51. "Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air-conditioning system vents.
52. "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:
  - a. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
  - b. Pesticides, which include substances such as insecticides and rodenticides;
  - c. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

- d. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

53. "Potentially hazardous food".

- a. "Potentially hazardous food" means a food that is a natural or synthetic and is in a form capable of supporting:
  - (1) The rapid and progressive growth of infectious or toxigenic micro-organisms;
  - (2) The growth and toxin production of clostridium botulinum; or
  - (3) In shell eggs, the growth of salmonella enteritidis.
- b. "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures.
- c. "Potentially hazardous food" does not include:
  - (1) A food with a water activity ( $A_w$  ( $a_w$ )) value of 0.85 or less;
  - (2) A food with a hydrogen ion concentration (PH(pH)) level of 4.6 or below when measured at seventy-five degrees Fahrenheit [24 degrees Celsius];
  - (3) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and
  - (4) A food for which a variance granted by the department is based upon laboratory evidence demonstrating that rapid and progressive growth of infectious and toxigenic micro-organisms or the slower growth of *C. botulinum* cannot occur.

54. "Poultry" means any domesticated bird including chickens, turkeys, ducks, geese, or guineas, whether live or dead.

55. "Premises" means the physical facility, its contents, and the contiguous land or property under the control of the licenseholder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the licenseholder that may impact food establishment personnel, facilities, or operations, if a food

establishment is only one component of a larger organization such as a health care facility, motel, school, recreational camp, or prison.

- 56. "Pushcart" means a non-self-propelled vehicle limited to serving potentially hazardous foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and service of frankfurters.
- 57. "Ready-to-eat food".
  - a. "Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.
  - b. "Ready-to-eat food" includes:
    - (1) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under section 33-33-04-11;
    - (2) Raw, washed cut fruits and vegetables;
    - (3) Whole, raw cut fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and
    - (4) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.
- 58. "Reconstituted" means dehydrated food products recombined with water or other liquids.
- 59. "Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is twenty-one percent oxygen. Reduced oxygen packaging includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.
- 60. "Regulatory authority" means the state and local enforcement authority or authorities having jurisdiction over the food establishment.
- 61. "Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and

the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

62. "Safe material" means an article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of food; an additive that is used as specified in subsection 409 or 706 of the federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the food and drug administration.
63. "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a reduction of five logs, which is equal to 99.999 percent reduction, of representative disease micro-organisms of public health importance.
64. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.
65. "Servicing area" means an operating base location to which a mobile establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.
66. "Shellstock" or "shucked shellfish" means raw, in-shell molluscan shellfish or molluscan shellfish that have one or both shells removed.
67. "Single-service articles" means tableware, carryout utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-person use.
68. "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten cans which do not meet the materials, durability, strength, and cleanability specifications contained in sections 33-33-04-32 and 33-33-04-38 for multiuse utensils.
69. "Smooth" means:
  - a. A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of one hundred grit (number 3) stainless steel;
  - b. A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

- c. A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.
70. "Support animal" means a trained animal such as a seeing eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.
71. "Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons and hollowware including bowls, cups, serving dishes, tumblers, and plates.
72. "Temporary food establishment" means a food establishment that operates at a fixed location for a period of time of not more than fourteen consecutive days in conjunction with a single event or celebration.
73. "Thermometer" means a thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.
74. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; and thermometers.
75. "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.
76. "Water activity" means a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol  $AW(a_s)$ .
77. "Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

**History:** Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-01.1. Intent - Scope.** The purpose of this chapter is to safeguard public health and to provide consumers with food that is safe, unadulterated, and honestly presented. This chapter establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, license issuance, inspection, and employee restrictions. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to

the requirements contained in this code that are authorized by law. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the license applicant or licenseholder and a copy shall be maintained in the regulatory authority's file for the food establishment.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-02. General care of food supplies.**

1. Food shall be obtained from sources that comply with law.
2. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption.
3. Food shall be safe, unadulterated, and honestly presented.
  - a. Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
  - b. Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
  - c. Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR subpart C section 424.21(b) - food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 185 - tolerances for pesticides in food.
4. Food prepared in a private home may not be used or offered for human consumption in a food establishment.
5. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-02.1. Additional safeguards.** In a food establishment that serves a highly susceptible population:



1. The following criteria apply to juice:
  - a. For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
  - b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR section 101.17(g) food labeling, or packaged juice or beverage containing juice, that bears a warning label as specified under subdivision b of subsection 17 of section 33-33-04-03 may not be served or offered for sale; and
  - c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under an HACCP plan that contains the information specified in sections 33-33-04-142 and 33-33-04-143 and as specified under 21 CFR part 120 - hazard analysis and critical control point (HACCP) systems, section 120.24 process controls.
2. Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:
  - a. Foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages; and
  - b. Except as specified in subsection 5, recipes in which more than one egg is broken and the eggs are combined.
3. Food in an unopened original package may not be re-served.
4. The following foods may not be served or offered for sale in a ready-to-eat form:
  - a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;
  - b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and
  - c. Raw seed sprouts.
5. Subdivision b of subsection 2 does not apply if:
  - a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under

subdivision a of subsection 1 of section 33-33-04-11, and served immediately, such as an omelet, souffle, or scrambled eggs;

- b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or
- c. The preparation of the food is conducted under an HACCP plan that:
  - (1) Identifies the food to be prepared;
  - (2) Prohibits contacting ready-to-eat food with bare hands;
  - (3) Includes specifications and practices that ensure:
    - (a) Salmonella enteritidis growth is controlled before and after cooking; and
    - (b) Salmonella enteritidis is destroyed by cooking the eggs according to the temperature and time specified in subdivision b of subsection 1 of section 33-33-04-11;
  - (4) Contains the information specified in subsection 3 of section 33-33-04-143 including procedures that:
    - (a) Control cross-contamination of ready-to-eat food with raw eggs; and
    - (b) Delineate cleaning and sanitization procedures for food-contact surfaces; and
  - (5) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-03. Special requirements.**

- 1. Fluid milk and milk products shall be obtained from sources that comply with grade A standards as specified by law.
- 2. Packaged food shall be labeled as specified in law, including 21 CFR 101 food labeling, 9 CFR 317 labeling, marking devices, and containers, and 9 CFR 381 subpart N labeling and containers, and as specified in sections 33-33-04-03.1 and 33-33-04-03.2.

3. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under subsection 4 of section 33-33-04-11 must be obtained from a supplier that freezes the fish or shall be frozen on the premises as specified in section 33-33-04-11.5.
4. Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in section 33-33-04-07.4 shall be:
  - a. Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; or
  - b. Deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and
  - c. If individually cut in a food establishment:
    - (1) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in subdivision a or identified as specified in subdivision b;
    - (2) Prepared so they remain intact; and
    - (3) If packaged for undercooking in a food establishment, labeled as specified in subdivision a or identified as specified in subdivision b.
5. Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(l) and 9 CFR 381.125(b).
6. Shell eggs that have not been specifically treated to destroy all viable salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h).
7. Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquids, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used. Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for United States consumer grade B as specified in 7 CFR part 56 "Voluntary Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs", and 9 CFR part 590 inspection of eggs and egg products.

8. Raw eggs may not be used as an ingredient in the preparation of uncooked, ready-to-eat menu items. Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages. Commercially pasteurized eggs and egg products may be substituted for shell eggs in such items. Pasteurized eggs are also potentially hazardous and must also be protected against contamination and time or temperature abuses.
9. Pasteurized liquid, frozen, or dry eggs or egg products must be substituted for shell eggs in the preparation of eggs for a highly susceptible population if the eggs are broken, combined in a container, and not cooked immediately or if the eggs are held before service following cooking.
10. Individually prepared eggs and pooled eggs shall be cooked to heat all parts to one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds.
11. Cooked eggs requiring holding before service shall be held at an internal temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.
12. Fish may not be received for sale or service unless they are commercially and legally caught and harvested. Molluscan shellfish that are recreationally caught may not be received for sale or service.
13. Except as specified in this subsection, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert. This subsection does not apply to:
  - a. Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or
  - b. Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.
14. If game animals are received for sale or service, they shall be:
  - a. Commercially raised for food and:
    - (1) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or

- (2) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and
  - (3) Raised, slaughtered, and processed according to:
    - (a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
    - (b) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;
- b. Under a voluntary inspection program administered by the United States department of agriculture for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 voluntary exotic animal program or rabbits that are "inspected and certified" in accordance with 9 CFR 354 rabbit inspection program;
- c. As allowed by law, for wild game animals that are live-caught:
  - (1) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction; and
  - (2) Slaughtered and processed according to:
    - (a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
    - (b) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or
- d. As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:
  - (1) Receive a postmortem examination by an approved veterinarian or veterinarian's designee; or

- (2) Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
  - (3) Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.
- e. A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 endangered and threatened wildlife and plants.
- 15. Ice for use as a food or a cooling medium must be made from drinking water. After use as a cooling medium, ice may not be used as food.
- 16. Prepackaged juice shall:
  - a. Be obtained from a processor with an HACCP system as specified in 21 CFR part 120;
  - b. Be obtained, pasteurized or otherwise treated to attain a 5-log reduction of the most resistant micro-organism of public health significance as specified in 21 CFR part 120.24; or
  - c. Bear a warning label as specified in 21 CFR 101.17(g).
- 17. Juice packaged in a food establishment shall be:
  - a. Treated under an HACCP plan as specified in section 33-33-04-143 to attain a 5-log reduction, which is equal to a 99.999 percent reduction, of the most resistant micro-organism of public health significance; or
  - b. Labeled, if not treated to yield a 5-log reduction of the most resistant micro-organism of public health significance:
    - (1) As specified under section 33-33-04-04.3; and
    - (2) As specified in 21 CFR 101.17(g) with the phrase, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."

**History:** Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-03.1. Shucked shellfish - Packaging and identification.**

1. Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:
  - a. Name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; and
  - b. The sell by date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.
2. A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under subsection 1 shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR subpart D - specific administrative decisions regarding interstate shipments, section 1240.60(d).

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-03.2. Shellstock identification.**

1. Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the national shellfish sanitation program guide for the control of molluscan shellfish, and that list:
  - a. Except as specified under subsection 3, on the harvester's tag or label, the following information in the following order:
    - (1) The harvester's identification number that is assigned by the shellfish control authority;
    - (2) The date of harvesting;
    - (3) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;
    - (4) The type and quantity of shellfish; and

- (5) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days"; and
- b. Except as specified in subsection 4, on each dealer's tag or label, the following information in the following order:
  - (1) The dealer's name and address and the certification number assigned by the shellfish control authority;
  - (2) The original shipper's certification number, including the abbreviation of the name of the state or country in which the shellfish are harvested;
  - (3) The same information as specified for a harvester's tag under paragraphs 2 through 4 of subdivision a of subsection 1; and
  - (4) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."
2. A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under subsection 1 shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR subpart D - specified administrative decisions regarding interstate shipments, section 1240.60(2).
3. If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.
4. If the harvester's tag or label is designed to accommodate each dealer's identification as specified under paragraphs 1 and 2 of subdivision b of subsection 1, individual dealer tags or labels need not be provided.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-03.3. Shellstock - Condition.** When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09



#### **33-33-04-03.4. Molluscan shellfish - Original container.**

1. Except as specified in subsections 2 and 3, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.
2. For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:
  - a. The source of the shellstock on display is identified as specified in section 33-33-04-03.2 and recorded as specified in section 33-33-04-03.5; and
  - b. The shellstock are protected from contamination.
3. Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:
  - a. The labeling information for the shellfish on display as specified in section 33-33-04-03.1 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
  - b. The shellfish are protected from contamination.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-03.5. Shellstock - Maintaining identification.**

1. Except as specified in subdivision b of subsection 2, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.
2. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for ninety calendar days from the date the container is emptied by:
  - a. Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and
  - b. If shellstock are removed from their tagged or labeled container:
    - (1) Preserving source identification by using a recordkeeping system as specified in subdivision a; and

- (2) Ensuring that shellstock from one tagged or labeled container are not commingled with the shellstock from another container before being ordered by the consumer.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-04. General food protection.** At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage, or overhead drippage from condensation. Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

1. Except as specified in subsection 2, refrigerated, potentially hazardous food shall be at a temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below when received.
2. If a temperature other than forty-one degrees Fahrenheit [5 degrees Celsius] for a potentially hazardous food is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature.
3. Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit [7 degrees Celsius] or less.
4. Potentially hazardous food that is cooked to a temperature and for a time specified in sections 33-33-04-11 through 33-33-04-11.2 and received hot shall be at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.
5. A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.
6. Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.
7. The temperature of potentially hazardous food shall be forty-one degrees Fahrenheit [5 degrees Celsius] or below or one hundred thirty-five degrees Fahrenheit [60 degrees Celsius] or above at all times, except as otherwise provided in this chapter.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-04.1. Packaged and unpackaged food - Separation, packaging, and segregation.**

1. Food shall be protected from cross-contamination by:
  - a. Separating raw animal foods during storage, preparation, holding, and display from:
    - (1) Raw ready-to-eat food, including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables; and
    - (2) Cooked ready-to-eat food;
  - b. Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:
    - (1) Using separate equipment for each type; or
    - (2) Arranging each type of food in equipment so that cross-contamination of one type with another is prevented; and
    - (3) Preparing each type of food at different times or in separate areas;
  - c. Cleaning and sanitizing equipment and utensils as specified in subsection 2 of section 33-33-04-50;
  - d. Except as specified in subsection 2, storing the food in packages, covered containers, or wrappings;
  - e. Cleaning hermetically sealed containers of food of visible soil before opening;
  - f. Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
  - g. Storing damaged, spoiled, or recalled food being held in the food establishment as specified in subsection 8 of section 33-33-04-06; and
  - h. Separating fruits and vegetables before they are washed as specified under section 33-33-04-10 from ready-to-eat food.
2. Subdivision d of subsection 1 does not apply to:

- a. Whole, uncut, raw fruits and vegetables and nuts in the shell that require peeling or hulling before consumption;
- b. Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;
- c. Whole, uncut processed meats such as country hams and smoked or cured sausages that are placed on clean, sanitized racks;
- d. Food being cooled as specified in subdivision b of subsection 2 of section 33-33-04-07.6; or
- e. Shellstock.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-04.2. Discarding or reconditioning unsafe, adulterated, or contaminated food.**

- 1. A food that is unsafe, adulterated, or not honestly presented as specified in section 33-33-04-02 shall be reconditioned according to an approved procedure or discarded.
- 2. Food that is not from an approved source as specified in section 33-33-04-02 shall be discarded.
- 3. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified in sections 33-33-04-28 through 33-33-04-28.2 shall be discarded.
- 4. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-04.3. Food labels.**

- 1. Food packaged in a food establishment shall be labeled as specified in law, including 21 CFR 101 - food labeling and 9 CFR 317 - labeling, marking devices, and containers.
- 2. Label information shall include:

- a. The common name of the food, or absent of a common name, an adequately descriptive identity statement;
  - b. If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;
  - c. An accurate declaration of the quantity of contents;
  - d. The name and place of business of the manufacturer, packer, or distributor; and
  - e. Except as exempted in the federal Food, Drug, and Cosmetic Act section 403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 - food labeling and 9 CFR 317 subpart B nutrition labeling.
  - f. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.
3. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:
  - a. The manufacturer's or processor's label that was provided with the food; or
  - b. A card, sign, or other method of notification that includes the information specified under subdivisions a, b, and e of subsection 2.
4. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:
  - a. A health, nutrient content, or other claim is not made;
  - b. There are no state or local laws requiring labeling; and
  - c. The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.
5. If required by law, consumer warnings shall be provided.

6. Food establishment or manufacturers' dating information on foods may not be concealed or altered.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-05. Emergency occurrences.** In the event of a fire, flood, power outage, or similar event that might result in contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the department. Upon receiving the notice of this occurrence, the department shall take whatever action that it deems necessary to protect the public health.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-06. General food storage.**

1. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer. Solid cuts of meat shall be protected by being covered in storage, except that the quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
2. Containers of food shall be stored a minimum of six inches [15.24 centimeters] above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:
  - a. Metal pressurized beverage containers, and cased food packaged in cans, glass, and milk containers in plastic crates, or other waterproof containers need not be elevated when the food containers are not exposed to floor moisture.
  - b. Containers may be stored on dollies, racks, or pallets, if such equipment is easily movable.
3. Food may not be stored:
  - a. In locker rooms;

- b. In toilet rooms;
  - c. In dressing rooms;
  - d. In garbage rooms;
  - e. In mechanical rooms;
  - f. Under sewerlines that are not shielded to intercept potential drips;
  - g. Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water had condensed;
  - h. Under open stairwells; or
  - i. Under other sources of contamination.
- 4. Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking.
  - 5. During preparation, unpackaged food shall be protected from environmental sources of contamination.
  - 6. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.
    - a. Except as specified in subdivisions b and c, unpackaged food may not be stored in direct contact with undrained ice.
    - b. Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.
    - c. Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.
  - 7. Working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, shall be identified with the common name of the food except that containers holding food that can be readily and unmistakably recognized such as dry pasta need not be identified.
  - 8. Products that are held by the licenseholder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled

products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-07. Potentially hazardous foods - Hot and cold holding.**

1. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified in section 33-33-04-07.3, and except as specified in subsection 2, potentially hazardous food shall be maintained:
  - a. At one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above, except that roasts cooked to a temperature and for a time specified under subdivision b of subsection 2 of section 33-33-04-11 or reheated as specified in subsection 5 of section 33-33-04-14 may be held at a temperature of one hundred thirty degrees Fahrenheit [54 degrees Celsius]; or
  - b. Forty-one degrees Fahrenheit [5 degrees Celsius] or less for a maximum of seven days.
2. Shell eggs that have not been treated to destroy all viable salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or less.
3. Frozen food shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit [-17.78 degrees Celsius] or below.
4. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-07.1. Ready-to-eat, potentially hazardous food - Date marking.**

1. Except as specified in subsection 4, refrigerated, ready-to-eat, potentially hazardous food prepared and held in a food establishment for more than twenty-four hours shall be clearly marked to indicate the



date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection 1 of section 33-33-04-07. The day of preparation shall be counted as day one.

2. Except as specified in subsections 4 and 5, refrigerated, ready-to-eat, potentially hazardous food commercially prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than twenty-four hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection 1 of section 33-33-04-07 and:
  - a. The day the original container is opened in the food establishment shall be counted as day one; and
  - b. The day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.
3. A refrigerated, ready-to-eat potentially hazardous food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine, may be marked as specified in subsection 1 or 2, or by an alternative method acceptable to the regulatory authority. Subsections 1 and 2 do not apply to specific cheeses containing certain moisture content meeting the aging standards of 21 CFR part 133 and maintained under refrigeration as specified in subsection 1 of section 33-33-04-07.
4. Subsections 1 and 2 do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.
5. Subsection 2 does not apply to the following when the face has been cut, but the remaining portion is whole and intact:
  - a. Fermented sausages produced in a federally inspected food processing plant that are not labeled "keep refrigerated" and which retain the original casing on the product;
  - b. Shelf-stable, dry, fermented sausages; and
  - c. Shelf-stable salt-cured products such as prosciutto and Parma (ham) produced in a federally inspected food processing plant that are not labeled "keep refrigerated".
6. A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food

shall retain the date marking of the earliest-prepared or first-prepared ingredient.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-07.2. Ready-to-eat, potentially hazardous food - Disposition.**

1. A food specified in subsection 1 or 2 of section 33-33-04-07.1 shall be discarded if it:
  - a. Exceeds either of the temperature and time combinations specified in subdivision b of subsection 1 of section 33-33-04-07, except that the product is frozen;
  - b. Is in a container or package that does not bear a date or day; or
  - c. Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subdivision b of subsection 1 of section 33-33-04-07.
2. Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in subdivision b of subsection 1 of section 33-33-04-07.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-07.3. Time as a public health control.** Time only, rather than time in conjunction with temperature, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, if:

1. The food is marked or otherwise identified with the time within which it must be cooked, served, or discarded;
2. The food is served or discarded within four hours from the point in time when the food is removed from temperature control;
3. Food in unmarked containers or packages, or for which the time expires, is discarded; and

4. Written procedures are maintained in the food establishment and made available to the regulatory authority upon request, to ensure compliance with:
  - a. Subsections 1 through 3; and
  - b. Section 33-33-04-07, for food that is prepared, cooked, and refrigerated before time is used as a public health control.
5. In a food establishment that serves a highly susceptible population, time only, rather than time in conjunction with temperature, may not be used as the public health control for raw eggs.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-07.4. Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens.** Except as specified in subsection 3 of section 33-33-04-11 and subdivision c of subsection 4 of section 33-33-04-11 and in subsection 4 of section 33-33-04-02.1, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish that is raw, undercooked, or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the licenseholder shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form. See appendix A.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-07.5. Cooling.**

1. Cooked potentially hazardous food shall be cooled from one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] to forty-one degrees Fahrenheit [5 degrees Celsius] or less, as specified in subdivision b of subsection 1 of section 33-33-04-07 in six hours, provided that the food is cooled from one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] to seventy degrees Fahrenheit [21 degrees Celsius] within the first two hours.
2. Potentially hazardous food shall be cooled within four hours to forty-one degrees Fahrenheit [5 degrees Celsius] or less as specified in subdivision b of subsection 1 of section 33-33-04-07 if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

3. Except as specified in subsection 4, a potentially hazardous food received in compliance with laws allowing a temperature above forty-one degrees Fahrenheit [5 degrees Celsius] during shipment from the supplier as specified in subsection 2 of section 33-33-04-02, shall be cooled within four hours to forty-one degrees Fahrenheit [5 degrees Celsius] or less.
4. Raw shell eggs shall be received as specified in subsection 3 of section 33-33-04-02 and immediately placed in refrigerated equipment that maintains an ambient air temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or less.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-07.6. Cooling methods.**

1. Cooling shall be accomplished in accordance with the time and temperature criteria specified in section 33-33-04-07.5 by using one or more of the following methods based on the type of food being cooled:
  - a. Placing the food in shallow pans;
  - b. Separating the food into smaller or thinner portions;
  - c. Using rapid cooling equipment;
  - d. Stirring the food in a container placed in an ice water bath;
  - e. Using containers that facilitate heat transfer;
  - f. Adding ice as an ingredient; or
  - g. Other effective methods.
2. When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:
  - a. Arranged in the equipment to provide maximum heat transfer through the container walls; and
  - b. Loosely covered, or uncovered if protected from overhead contamination as specified in subsection 3 of section 33-33-04-06,

during the cooling period to facilitate heat transfer from the surface of the food.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-08. Hot and cold storage.** Enough conveniently located hot and cold food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-09. General food preparation.** Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross-contamination.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-09.1. Preventing contamination when tasting.** A food employee may not use a utensil more than once to taste food that is to be sold or served.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 23-01-03(3), 23-09.1-02

**Law Implemented:** NDCC 23-09.1-02

**33-33-04-10. Washing raw fruits and vegetables.**

1. Raw fruits and vegetables must be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except as specified in subsection 2 and except that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.
2. Fruits and vegetables may be washed by using chemicals as specified in subsection 5 of section 33-33-04-107.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### 33-33-04-11. Cooking raw animal foods.

1. Except as specified under subsections 2, 3, and 4, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:
    - a. One hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds for:
      - (1) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and
      - (2) Except as specified under subdivisions b and c of subsection 1 and subsection 2, fish, meat, and pork, including game animals commercially raised for food as specified in subsection 14 of section 33-33-04-03 and game animals under a voluntary inspection program as specified in subsection 14 of section 33-33-04-03;
    - b. One hundred fifty-five degrees Fahrenheit [68 degrees Celsius] for fifteen seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified in subsection 14 of section 33-33-01-03, and game animals under a voluntary inspection program as specified in subsection 14 of section 33-33-04-03; and raw eggs that are not prepared as specified under paragraph 1 of subdivision a of subsection 1; or
- | Minimum             |                           |
|---------------------|---------------------------|
| Temperature °F [°C] | Time                      |
| 145 [63]            | 3 minutes                 |
| 150 [66]            | 1 minute                  |
| 158 [70]            | <1 second (instantaneous) |
- c. One hundred sixty-five degrees Fahrenheit [74 degrees Celsius] or above for fifteen seconds for poultry, wild game animals as specified in subsection 14 of section 33-33-04-03, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.
  2. Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham shall be cooked:

- a. In an oven that is prepared to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kb [10 lbs]	4.5 kb [10 lbs] or more
Still Dry	350°F [177°C] or more	250°F [121°C] or more
Convection	325°F [163°C] or more	250°F [121°C] or more
High Humidity	250°F [121°C] or more	250°F [121°C] or more
Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.		

- b. As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

Temperature °F [°C]	Time in Minutes	Temperature °F [°C]	Time in Seconds
130 [54.4]	112	147 [63.9]	134
131 [55.0]	89	149 [65.0]	85
133 [56.1]	56	147 [63.9]	54
135 [57.2]	36	149 [65.0]	34
136 [57.8]	28	151 [66.1]	22
138 [58.9]	18	153 [67.2]	14
140 [60.0]	12	155 [68.3]	0
142 [61.1]	8	157 [69.4]	
144 [62.2]	5	158 [70.0]	
145 [62.8]	4		
Holding time may include postoven heat rise.			

3. A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:
  - a. The food establishment serves a population that is not a highly susceptible population;
  - b. The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified in subsection 4 of section 33-33-04-03; and

- c. The steak is cooked on both the top and bottom to a surface temperature of one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above and a cooked color change is achieved on all external surfaces.
- 4. A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft-cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subsection 3, may be served or offered for sale in a ready-to-eat form upon consumer request if:
  - a. The food establishment serves a population that is not a highly susceptible population; and
  - b. The consumer is informed as specified in section 33-33-04-07.4 that to ensure its safety, the food should be cooked as specified under subsection 1 or 2; or
  - c. The regulatory authority grants a variance from subsection 1 or 2 as specified in section 33-33-04-18.1 based on an HACCP plan that:
    - (1) Is submitted by the licenseholder and approved as specified in section 33-33-04-142;
    - (2) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food; and
    - (3) Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

**History:** Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-11.1. Minimum food temperature and holding time.** Repealed effective August 1, 2003.

**33-33-04-11.2. Oven parameters required for destruction of pathogens.** Repealed effective August 1, 2003.

**33-33-04-11.3. Minimum holding times required at specified temperatures.** Repealed effective August 1, 2003.

**33-33-04-11.4. Microwave cooking.** Raw animal foods cooked in a microwave shall be:



1. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat.
2. Covered to retain surface moisture.
3. Heated to a temperature of at least one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] in all parts of the food.
4. Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-11.5. Parasite destruction.**

1. Except as specified in subsection 2, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated partially cooked fish other than molluscan shellfish shall be:
  - a. Frozen and stored at a temperature of minus four degrees Fahrenheit [-20 degrees Celsius] or below for one hundred sixty-eight hours [seven days] in a freezer; or
  - b. Frozen at minus thirty-one degrees Fahrenheit [-35 degrees Celsius] or below until solid and stored at minus thirty-one degrees Fahrenheit [-35 degrees Celsius] for fifteen hours.
2. If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (bluefin tuna, southern), *Thunnus obesus* (bigeye tuna), or *Thunnus thynnus* (bluefin tuna, northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under subsection 1.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-11.6. Plant food cooking for hot holding.** Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius].

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-11.7. Records - Creation and retention.**

1. Except as specified in subsection 2 of section 33-33-04-11.5 and subsection 2, if raw, raw-marinated, partially cooked, or marinated partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food establishment for ninety calendar days beyond the time of service or sale of the fish.
2. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified in section 33-33-04-11.5 may substitute for the records specified under subsection 1.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-11.8. Re-serving cooked and refrigerated food.** Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-12. Milk products - Pasteurized.**

1. Fluid and dry milk and milk products complying with grade A standards as specified in law shall be obtained pasteurized.
2. Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - frozen desserts.
3. Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the Code of Federal Regulations, such as 21 CFR 133 - cheeses and related cheese products, for curing certain cheese varieties.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-13. Egg products - Pasteurized.** Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-14. Reheating for hot holding.**

1. Except as specified under subsections 2, 3, and 5, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] for fifteen seconds.
2. Except as specified under subsection 3, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] and the food is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating.
3. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] for hot holding.
4. Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified in section 33-33-04-18 and one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] may not exceed two hours.
5. Remaining unsliced portions of roasts of beef that are cooked as specified in subsection 2 of section 33-33-04-11 may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in subsection 2 of section 33-33-04-11.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-15. Nondairy products.** Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they are stored in sanitized, covered containers not exceeding one gallon [3.785 liters] in capacity

and cooled to forty-one degrees Fahrenheit [5 degrees Celsius] or below within four hours after preparation.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-16. Product thermometers.** Repealed effective July 1, 1997.

**33-33-04-17. Thawing potentially hazardous foods.** Except as specified in subsection 5, potentially hazardous foods shall be thawed in any one of the following ways:

1. In refrigerated units at a temperature not to exceed forty-one degrees Fahrenheit [5 degrees Celsius].
2. Under potable running water of a temperature of seventy degrees Fahrenheit [21.1 degrees Celsius] or below, with sufficient water velocity to agitate and float off loose food particles into the overflow for a period of time that does not allow thawed portions of ready-to-eat food to rise above forty-one degrees Fahrenheit [5 degrees Celsius] or for a period of time that does not allow thawed portions of raw animal food requiring cooking to be above forty-one degrees Fahrenheit [5 degrees Celsius] for more than four hours including the time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to forty-one degrees Fahrenheit [5 degrees Celsius].
3. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven.
4. As part of the conventional cooking process.
5. Using any procedure if a portion of ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-18. Food display and service of potentially hazardous foods.** Potentially hazardous foods shall be kept at an internal temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below or an internal temperature of one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above during display and service, except that rare roast beef shall be held for service

at a temperature of at least one hundred thirty degrees Fahrenheit [54.4 degrees Celsius].

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-18.1. Variance requirement.** A food establishment shall obtain a variance from the department as specified in section 33-33-04-139 and under section 33-33-04-140 before:

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;
2. Curing food;
3. Using food additives or adding components such as vinegar:
  - a. As a method of food preservation rather than as a method of flavor enhancement; or
  - b. To render a food so that it is not potentially hazardous;
4. Packaging food using a reduced oxygen packaging method except as specified in section 33-33-04-18.2 where a barrier to clostridium botulinum in addition to refrigeration exists;
5. Operating a molluscan shellfish life support system display tank used to store and display shellfish that are offered for human consumption;
6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment; or
7. Preparing food by another method that is determined by the regulatory authority to require a variance.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-18.2. Reduced oxygen packaging - Criteria.**

1. A food establishment that packages food using reduced oxygen packaging methods shall have an HACCP plan that contains the information specified under subsection 3 of section 33-33-04-142 which:
  - a. Identifies the food to be packaged;

- b. Limits the food packaged to a food that does not support the growth of clostridium botulinum because it complies with one of the following:
  - (1) Has an  $A_w$  ( $a_w$ ) of 0.91 or less;
  - (2) Has a PH (pH) of 4.6 or less;
  - (3) Is a meat product cured at a food processing plant regulated by the United States department of agriculture or in 9 CFR 318.7 approval of substances for use in the preparation of products and 9 CFR 381.147 restrictions on the use of substances in poultry products and is received in an intact package; or
  - (4) Is a food with a high level of competing organisms such as raw meat or raw poultry;
- c. Specifies methods for maintaining food at forty-one degrees Fahrenheit [5 degrees Celsius] or below;
- d. Describes how the packages must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
  - (1) Maintain the food at forty-one degrees Fahrenheit [5 degrees Celsius] or below; and
  - (2) For food held at refrigeration temperatures, discard the food if within fourteen calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;
- e. Limits the refrigerated shelf life to no more than fourteen calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;
- f. Includes operational procedures that:
  - (1) Limit contacting food with bare hands;
  - (2) Identify a designated area and the method by which:
    - (a) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination; and

- (b) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and
  - (3) Delineate cleaning and sanitization procedures for food-contact surfaces; and
- 9. Ensure that the individual responsible for the reduced oxygen packaging operation understands the:
  - (1) Concepts required for a safe operation;
  - (2) Equipment and facilities; and
  - (3) Procedures specified in subdivision f of subsection 1 and subsection 4 of section 33-33-04-143.
- 2. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-19. Milk and cream dispensing.**

- 1. Milk and milk products for drinking purposes must be provided to the consumer in an unopened, commercially filled package not exceeding one pint [0.473 liter] in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch [2.54 centimeters] protruding from the chilled dispensing head. Where a dispenser for milk and milk products is not available and portions of less than one-half pint [0.236 liter] are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half gallon [1.892 liters] capacity.
- 2. Cream of half and half must be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-19.1. Dispensing equipment, protection of equipment, and food.** In equipment that dispenses or vends liquid food or ice in unpackaged form:

1. The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food must be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food.
2. The delivery tube, chute, and orifice must be protected from manual contact and be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
  - a. Located in an outside area that does not afford the protection of an enclosure against rain, windblown debris, insects, rodents, and other contaminants.
  - b. Available for self-service during hours when it is not under the full-time supervision of a food employee.
3. The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment must be designed to prevent contact with the lip contact surface of glasses or cups that are refillable.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-19.2. Molluscan shellfish tanks.** Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption must be operated and maintained to ensure that:

1. Water used with fish other than molluscan shellfish does not flow into the molluscan tanks.
2. The safety and quality of the shellfish as they were received are not compromised by use of the tank.
3. The identity of the source of the shell stock is retained as specified in subsection 2 of section 33-33-04-03.2.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-20. Nondairy product dispensing.** Nondairy creaming or whitening agents must be provided in an individual service container, protected



pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-21. Condiment dispensing.**

1. Condiments, seasonings, and dressings for self-service use shall be protected from contamination by being kept in dispensers that are designed to provide protection. Protected food displays shall be provided with the proper utensils in accordance with sections 33-33-04-23 and 33-33-04-25.
2. Condiments provided for table or counter service must be individually portioned, except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use must be provided in individual packages or in pour-type dispensers.
3. Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.
4. Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-21.1. Vending machine dispensing.** The dispensing compartment of a vending machine, including a machine that is designed to vend prepackaged snack food that is not potentially hazardous such as chips, party mixes, and pretzels, shall be equipped with a self-closing door or cover if the machine is:

1. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

2. Available for self-service during hours when it is not under the full-time supervision of a food employee.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-21.2. Vending machines - Automatic shutoff.**

1. A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:
  - a. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified in section 33-33-04-04; and
  - b. If a condition specified under subdivision a occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified in section 33-33-04-04.
2. When the automatic shutoff within a machine vending potentially hazardous food is activated:
  - a. In a refrigerated vending machine, the ambient temperature may not exceed any time and temperature combination as specified under subdivision b of subsection 1 of section 33-33-04-07 for more than thirty minutes immediately after the machine is filled, serviced, or restocked; or
  - b. In a hot holding vending machine, the ambient temperature may not be less than one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] for more than one hundred twenty minutes immediately after the machine is filled, serviced, or restocked.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-22. Ice dispensing.** Ice for consumer use must be dispensed only by employees with scoops, tongs, or other ice-dispensing utensils or through automatic self-service, ice-dispensing equipment. Ice-dispensing utensils must be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles must be stored in a way that protects them from contamination. Ice storage bins shall be drained through an

airgap. Liquid water drain lines may not pass through an ice machine or ice storage bin.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-23. Dispensing utensils.** To avoid unnecessary manual contact with food, suitable dispensing utensils must be used by employees or provided to consumers who serve themselves.

A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

1. Except as specified under subsection 2, in the food with their handles above the top of the food and the container;
2. In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
3. On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified in subsection 2 of section 33-33-04-50;
4. In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;
5. In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or
6. In a container of water if the water is maintained at a temperature of at least one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] and the container is cleaned at a frequency specified under subsection 2 of section 33-33-04-50.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-24. Re-serving.**

1. Except as specified in subsection 2, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

2. Except as specified under subsection 3 of section 33-33-04-02.1, a container of food that is not potentially hazardous may be transferred from one consumer to another if:
  - a. The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce; or
  - b. The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-25. Food display.** Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-25.1. Consumer self-service operations.**

1. Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This subsection does not apply to consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish; ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or raw, frozen, shell-on shrimp or lobster.
2. Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.
3. Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

**History:** Effective August 1, 2003

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-26. Reuse of tableware.**

1. Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip contact area of the drinking cut or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.
2. Except as specified in subsection 3, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.
3. Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under section 33-33-04-19.1.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-27. General food transportation.** During transportation, food and food utensils must be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, food must meet the requirements relating to food protection and food storage.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-27.1. Management and personnel.** The licenseholder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-27.2. Demonstration of knowledge.** Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the hazard analysis critical control point principles, and the requirements of this code, as it relates to the food operation. The person in charge shall demonstrate this knowledge by compliance with this code, or by being a certified food protection manager who has shown proficiency of required information through passing an accredited test,

or by responding correctly to the inspector's questions as they relate to the specific food operation.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28. Employee health.** (See appendix B (1)). The licenseholder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subsection 3, if the food employee or applicant:

1. Is diagnosed with an illness due to:
  - a. *Salmonella typhi*;
  - b. *Shigella* spp.;
  - c. Shiga toxin-producing *E. coli*O157:H7; or
  - d. Hepatitis A virus;
2. Has a symptom caused by illness, infection, or other source that is:
  - a. Associated with an acute gastrointestinal illness such as:
    - (1) Diarrhea;
    - (2) Fever;
    - (3) Vomiting;
    - (4) Jaundice; or
    - (5) Sore throat with fever; or
  - b. A lesion containing pus such as a boil or infected wound that is open or draining and is:
    - (1) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;
    - (2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or

- (3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;
- 3. Had a past illness from:
  - a. *S. typhi* within the past three months;
  - b. *Shigella* spp. within the past month;
  - c. Shiga toxin-producing *E. coli* within the past month; or
  - d. Hepatitis A virus; or
- 4. Meets one or more of the following high-risk conditions:
  - a. Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., shiga toxin-producing *E. coli*O157:H7, or hepatitis A virus illness including an outbreak at an event such as a family meal, church supper, or ethnic festival because the food employee or applicant:
    - (1) Prepared food implicated in the outbreak;
    - (2) Consumed food implicated in the outbreak; or
    - (3) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a carrier of the infectious agent; or
  - b. Lives in the same household as a person who is diagnosed with a disease caused by *S. typhi*, *Shigella* spp., shiga toxin-producing *E. coli*O157:H7, or hepatitis A virus infection;
  - c. Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., shiga toxin-producing *E. coli*O157:H7, or hepatitis A virus infection; or
  - d. Traveled out of the United States within the last fifty calendar days.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28.1. Employee exclusions and restrictions.** The person in charge shall:

1. Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in subsection 1 of section 33-33-04-28.
2. Except as specified under subsection 3, restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is:
  - a. Suffering from a symptom specified in subsection 2 of section 33-33-04-28; or
  - b. Is not experiencing a symptom of acute gastroenteritis specified in subdivision a of subsection 2 of section 33-33-04-28 but has a stool that yields a specimen culture that is positive for *Salmonella typhi*, *Shigella* spp., or shiga toxin-producing *E. coli*.
3. If the population served is a highly susceptible population, exclude a food employee who:
  - a. Is experiencing a symptom of acute gastrointestinal illness specified in subdivision a of subsection 2 of section 33-33-04-28 and meets a high-risk condition specified in subdivisions a through d of subsection 4 of section 33-33-04-28;
  - b. Is not experiencing a symptom of acute gastroenteritis specified in subdivision a of subsection 2 of section 33-33-04-28 but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella* spp., or shiga toxin-producing *E. coli*O157:H7;
  - c. Had a past illness from *S. typhi* within the last three months; or
  - d. Had a past illness from *Shigella* spp. or shiga toxin-producing *E. coli*O157:H7 within the last month.
4. For a food employee who is jaundiced:
  - a. If the onset of jaundice occurred within the last seven calendar days, exclude the food employee from the food establishment; or
  - b. If the onset of jaundice occurred more than seven calendar days before:
    - (1) Exclude the food employee from a food establishment that serves a highly susceptible population; or



- (2) Restrict the food employee from activities specified in subsection 2, if the food establishment does not serve a highly susceptible population.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28.2. Removal of exclusions and restrictions. (See appendix B-2)**

1. The person in charge may remove an exclusion specified in subsection 1 of section 33-33-04-28.1 if the person in charge obtains approval from the regulatory authority and if the person excluded as specified in subsection 1 of section 33-33-04-28.1 provides to the person in charge written medical documentation from a physician licensed to practice medicine that specifies that the excluded person:
  - a. May work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of:
    - (1) The infectious agent of concern as specified in section 33-33-04-28.8; or
    - (2) Symptoms, if hepatitis A virus is the infectious agent of concern; or
  - b. May only work in an unrestricted capacity in a food establishment that does not serve a highly susceptible population because the person is free of the symptoms specified in subdivision a of subsection 2 of section 33-33-04-28.
2. The person in charge may remove a restriction specified in:
  - a. Subdivision a of subsection 1 of section 33-33-04-28.1 if the restricted person:
    - (1) Is free of the symptoms specified in subsection 2 of section 33-33-04-28; and
    - (2) Provides written medical documentation from a physician licensed to practice medicine stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in subsection 2 of section 33-33-04-28; or
    - (3) Provides written medical documentation from a physician licensed to practice medicine stating that the symptoms

experienced result from a chronic noninfectious condition such as ulcerative colitis or irritable bowel syndrome; or

- b. Subdivision b of subsection 2 of section 33-33-04-28.1 if the restricted person provides written medical documentation according to the criteria specified in section 33-33-04-28.8 that indicates the stools are free of *Salmonella typhi*.
3. The person in charge may remove an exclusion specified under subsection 3 of section 33-33-04-28.1 if the excluded person provides written medical documentation from a physician licensed to practice medicine that the person is free of *S. typhi*, *Shigella* spp., shiga toxin-producing *E. coli* O157:H7, or hepatitis A virus infection, whichever is the infectious agent of concern, as specified in section 33-33-04-28.8.
4. The person in charge may remove an exclusion specified in subdivisions a and b of subsection 4 of section 33-33-04-28.1 and a restriction specified in subdivision b of subsection 4 of section 33-33-04-28.1 if:
  - a. No foodborne illness occurs that may have been caused by the excluded or restricted person and the person:
    - (1) Provides written medical documentation from a physician licensed to practice medicine stating that the person is free of hepatitis A virus as specified in subdivision b of subsection 4 of section 33-33-04-28.8;
    - (2) Is no longer jaundiced; or
  - b. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivision a.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28.3. Responsibility of a food employee or an applicant to report to the person in charge.** A food employee or a person who applies for a job as a food employee shall:

1. In a manner specified in section 33-33-04-28, report to the person in charge the information specified in section 33-33-04-28.

2. Comply with exclusions and restrictions that are specified in section 33-33-04-28.1.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28.4. Reporting by the person in charge.** The person in charge shall notify the regulatory authority of a food employee or a person who applies for a job as a food employee who is diagnosed with, or is suspected of having an illness due to, *Salmonella typhi*, *Shigella* spp., *Escherichia coli*O157:H7; or hepatitis A virus infection.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28.5. Obtaining information - Personal history of illness, medical examination, and specimen analysis.** The department shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

1. Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28.6. Restriction or exclusion of food employee or summary suspension of license.** Based on the findings of an investigation related to an employee who is suspected of being infected or diseased, the department may issue an order to the suspected employee or licenseholder instituting one or more of the following control measures:

1. Restricting the employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;
2. Excluding the employee from a food establishment; or

3. Closing the food establishment by summarily suspending a license to operate in accordance with law.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28.7. Restriction or exclusion order - Warning or hearing not required - Information required in order.** Based on the findings of the investigation as specified in section 33-33-04-28.5 and to control disease transmission, the department may issue an order of restriction or exclusion to a suspected employee or the licenseholder without prior warning, notice of a hearing, or a hearing if the order:

1. States the reasons for the restriction or exclusion that is ordered;
2. States the evidence that the employee or licenseholder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
3. States that the suspected employee or the licenseholder may request an appeal hearing by submitting a timely request as provided under law; and
4. Provides the name and address of the department representative to whom a request for an appeal hearing may be made.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-28.8. Release of employee from restriction or exclusion.** The department shall release an employee from restriction or exclusion according to law and the following conditions:

1. An employee who was infected with salmonella typhi if the employee's stools are negative for salmonella typhi based on testing of at least three consecutive stool specimen cultures that are taken:
  - a. Not earlier than one month after onset;
  - b. At least forty-eight hours after discontinuance of antibiotics; and
  - c. At least twenty-four hours apart.
2. If one of the cultures taken as specified in subsection 1 is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.

3. An employee who was infected with *Shigella* spp. or shiga toxin-producing *E. coli*O157:H7 if the employee's stools are negative for *Shigella* spp., shiga toxin-producing *E. coli*O157:H7 based on testing of two consecutive stool specimen cultures that are taken:
  - a. Not earlier than forty-eight hours after discontinuance of antibiotics; and
  - b. At least twenty-four hours apart.
4. An employee who was infected with hepatitis A virus if:
  - a. Symptoms cease; or
  - b. At least two blood tests show falling liver enzymes.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-29. General personal cleanliness.**

1. Except as specified in subsection 2, food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least twenty seconds, using a cleaning compound in a handsink that is equipped as specified in section 33-33-04-77.
2. Food employees shall use the following cleaning procedure:
  - a. Vigorous friction on the surfaces of the lathered fingers, fingertips, areas between the fingers, hands, and arms or by vigorously rubbing the surrogate prosthetic devices for hands or arms for at least twenty to thirty seconds, followed by;
  - b. Thorough rinsing under clean, running warm water; and
  - c. Immediately follow the cleaning procedure with thorough drying of cleaned hands and arms or surrogate prosthetic devices using a method as specified in section 33-33-04-77.
3. Food employees shall pay particular attention to the areas underneath the fingernails during the cleaning procedure.

4. If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-29.1. Preventing contamination from hands - When to wash.**

1. Food employees shall wash their hands as specified in section 33-33-04-29.
2. Except when washing fruits and vegetables as specified in section 33-33-04-10, food employees shall limit direct hand contact with exposed, ready-to-eat food when deli tissue, spatulas, tongs, dispensing equipment, or other utensils can be used.
3. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-29.2. Hand sanitizer.**

1. A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:
  - a. Be applied only to hands that are cleaned as specified in section 33-33-04-29;
  - b. Comply with one of the following:
    - (1) Be an approved drug that is listed with the food and drug administration publication "Approved Drug Products With Therapeutic Equivalence Evaluations" as an approved drug based on safety and effectiveness; or
    - (2) Have active antimicrobial ingredients that are listed in the food and drug administration monograph for over-the-counter health care antiseptic drug products as an antiseptic handwash; or
  - c. Comply with one of the following:
    - (1) Have components that are exempted from the requirement of being listed in federal food additive regulations as specified in

21 CFR 170.39 - threshold of regulation for substances used in food-contact articles; or

(2) Comply with and be listed in:

- (a) 21 CFR 178 - indirect food additives: adjuvants, production aids, and sanitizers as regulated for use as a food additive with conditions of safe use; or
- (b) 21 CFR 182 - substances generally recognized as safe, 21 CFR 184 - direct food substances affirmed as generally recognized as safe, or 21 CFR 186 - indirect food substances affirmed as generally recognized as safe for use in contact with food;

- 2. If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under subdivision b of subsection 1, use shall be:
  - a. Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or
  - b. Limited to situations that involve no direct contact with food by the bare hands; and
- 3. A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least one hundred milligrams per liter chlorine.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-29.3. Where to wash.** Food employees shall clean their hands in a handsink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-29.4. Fingernail maintenance.** Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable

and not rough. Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-30. General clothing and jewelry.** Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles. While preparing food, food employees may not wear jewelry, including medical information jewelry, on their arms and hands. This section does not apply to a plain ring such as a wedding band.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-31. General employee practices.**

1. Employees may consume food only in designated dining areas. An employee dining area may not be so designated if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection.
2. Employees may not use tobacco in any form while engaged in food preparation or service, or while in areas used for equipment or utensil washing or food preparation. Employees may use tobacco only in designated areas. An employee tobacco-use area may not be designated for that purpose if the use of tobacco there may result in contamination of food, equipment, utensils, or other items needing protection.
3. Employees shall handle soiled tableware in a way that minimizes contamination of their hands.
4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food establishment.
5. A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the employee's hands, the container, and exposed food, equipment, utensils, linens, and single-service articles.
6. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may



not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-31.1. Hair restraints.**

1. Except as provided under subsection 2, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
2. This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-32. General equipment and utensils materials.** Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use and withstand repeated warewashing. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not allow the migration of deleterious substances or impart odors, color, or taste. Specific materials limitations are as follows:

1. Cast iron may not be used for utensils or food-contact surfaces of equipment except as a surface for cooking and in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.
2. Ceramic, china, crystal utensils, and decorative utensils such as hand-painted ceramic or china that are used in contact with food must be lead-free or contain levels of lead not excluding the following limits:

Utensil Category	Description	Maximum Lead
Hot Beverage Mugs	Coffee Mugs	0.5 mg/L
Large Hollowware	Bowls > 1.1L [1.16 QT]	1 mg/L
Small Hollowware	Bowls < 1.1L [1.16 QT]	2.0 mg/L
Flat Utensils	Plates, Saucers	3.0 mg/L

3. Copper and copper alloys such as brass may not be used in contact with a food that has a pH below six such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator. Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below six in the prefermentation and fermentation steps of a beer brewing operation such as a brew pub or microbrewery.
4. Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used for beverages, acidic food, moist food, or hygroscopic food.

**History:** Effective August 1, 1998; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-33. Solder and pewter alloys.** If solder is used, it must be composed of safe materials and be corrosion resistant. Solder and flux containing lead in excess of 0.2 percent may not be used on surfaces that contact food. Pewter alloys containing lead in excess of 0.05 percent may not be used as a food-contact surface.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-34. Wood.**

1. Except as specified in subsections 2, 3, 4, and 5, wood and wood wicker may not be used as a food-contact surface.
2. Hard maple or an equivalent hard, close-grained wood may be used for:
  - a. Cutting boards, cutting blocks, baker's tables, and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
  - b. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of two hundred thirty degrees Fahrenheit [110 degrees Celsius] or above.
3. Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.
4. If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:
  - a. Untreated wood containers; or
  - b. Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 preservatives for wood.
5. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-34.1. Cutting surfaces.** Surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and sanitized or discarded if they are not capable of being sanitized.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-35. Plastics.** Safe plastic, safe rubber, or safe rubberlike materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods,

and which meet the general requirements set forth in section 33-33-04-32 are permitted for repeated use.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-35.1. Sponges.** Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-35.2. Nonstick coatings.** Multiuse kitchenware such as frying pans, griddles, saucepans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-36. Mollusk and crustacea shells.** Mollusk and crustacea shells may be used only once as a serving container. Reuse of such shells for food service is prohibited.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-36.1. Slash-resistant gloves.** Slash-resistant gloves that are used to protect hands during operations requiring cutting may be used in direct contact only with food that is subsequently cooked. Slash-resistant gloves may be used with ready-to-eat foods that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface or are covered with a smooth, durable, nonabsorbent glove, or single-use glove. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-37. Single-service articles.** Reuse of single-service articles is prohibited. Materials that are used to make single-service and single-use articles:

1. May not:

- a. Allow the migration of deleterious substances; or
  - b. Impart colors, odors, or tastes to food; and
- 2. Shall be:
  - a. Safe; and
  - b. Clean.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-38. General design and fabrication.** All equipment and utensils, including plasticware, shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions and must be resistant to denting, buckling, pitting, chipping, crazing, distortion, and decomposition. Equipment shall be maintained in a state of repair and components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications and must meet the following standards as applicable:

- 1. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices and finished to have smooth welds and joints. Threads must be designed to facilitate cleaning, ordinary "V"-type threads may not be used in food-contact surfaces, except that in equipment such as icemakers or hot oil cooking equipment and hot oil filtering systems where such threads must be minimized.
- 2. Equipment containing bearings and gears requiring unsafe lubricants must be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants may be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.
- 3. Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice provided such tubing is fabricated from safe materials, is grommeted at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units may not pass through the ice machine or the ice storage bin.
- 4. Sinks and drainboards must be self-draining.

5. Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-39. Accessibility.** Unless designed for in-place cleaning, food-contact surfaces must be accessible for cleaning and inspection in any of the following ways:

1. Without being disassembled.
2. By disassembling without the use of tools.
3. By easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-40. In-place cleaning.** Equipment intended for in-place cleaning must be so designed and fabricated that all of the following requirements are met:

1. Cleaning and sanitizing solutions are circulated throughout a fixed system using an effective cleaning and sanitizing regimen.
2. Cleaning and sanitizing solutions contact all interior food-contact surfaces.
3. The system is self-draining or capable of being completely evacuated.
4. Provides inspection access points to ensure all surfaces are being effectively cleaned.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-41. Pressure spray cleaning.** Fixed equipment designed and constructed to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-42. Thermometers - Food.** Thermometers may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

1. Thermometers that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus one degree Celsius in the intended range of use.
2. Thermometers that are scaled only in Fahrenheit shall be accurate to plus or minus two degrees Fahrenheit in the intended range of use.
3. Thermometers shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified in sections 33-33-04-11 through 33-33-04-11.2. Thermometers with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets.
4. Each hot and cold food storage facility storing potentially hazardous food shall be provided with a numerically scaled recording or indicating thermometer. If it is impractical to install thermometers on equipment such as bainmaries, steamtables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-42.1. Thermometers - Ambient air and water.** Ambient air and water thermometers that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to plus or minus one and one-half degrees Celsius in the intended range of use. Ambient air and water thermometers that are scaled only in Fahrenheit shall be accurate to plus or minus three degrees Fahrenheit in the intended range of use.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-43. Nonfood-contact surfaces.** Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, must be designed and constructed to be smooth, washable, corrosion-resistant, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and must be of such material and in such repair as to be easily maintained in a clean and sanitary condition. Kick plates must be designed so that the areas behind them are accessible for

inspection and cleaning by being removable without being disassembled, by disassembling without the use of tools, or by easy disassembling with use of tools kept near the equipment and are accessible for use. Nonfood-contact surfaces of equipment must be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-44. Ventilation hoods.** Exhaust ventilation hood systems in food preparation and warewashing areas, including components such as hoods, fans, guards, and ducting, shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles. Filters or other grease-extracting equipment must be readily removable for cleaning and replacement if not designed to be cleaned in place and must be kept clean. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-45. Existing equipment.** Equipment installed in a food service establishment prior to July 1, 2003, that does not fully meet all of the design and construction requirements of this chapter must be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and if the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after July 1, 2003, must meet the requirements of this chapter.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-46. General equipment installation and location.** Equipment, including icemakers and ice storage equipment, may not be located under exposed or unprotected sewerlines or waterlines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09



### **33-33-04-47. Table-mounted equipment.**

1. Equipment that is placed on tables or counters, unless portable, must be sealed to the table or counter or elevated on legs to provide at least a four-inch [10.16-centimeter] clearance between the table or counter and equipment, and must be installed to facilitate the cleaning of the equipment and adjacent areas.
2. Equipment is portable within the meaning of subsection 1 if both of the following requirements are met:
  - a. Small and light enough to be moved easily by one person.
  - b. It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-48. Floor-mounted equipment.**

1. Floor-mounted equipment, unless easily movable, must be:
  - a. Sealed to the floor;
  - b. Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or
  - c. Elevated on legs to provide at least a six-inch [15.24-centimeter] clearance between the floor and equipment. However, vertically mounted floor mixers may be elevated to provide at least a four-inch [10.16-centimeter] clearance between the floor and equipment if no part of the floor under the mixer is more than six inches [15.24 centimeters] from cleaning access.
2. Equipment is easily movable if:
  - a. It is mounted on wheels or casters; and
  - b. It has no utility connection or has a utility connection that connects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.
3. Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and

adjoining equipment units and adjacent walls or ceilings shall be not more than one thirty-second of an inch [1 millimeter]; or if exposed to seepage, the equipment must be sealed to the adjoining equipment or adjacent walls or ceilings.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-49. Aisles and working spaces.** Aisles and working spaces between units of equipment and walls must be unobstructed and of sufficient width or space to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies must be positioned to provide accessibility to working areas.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-50. Cleaning frequency of equipment and utensils cleaning and sanitizing.**

1. Tableware must be washed, rinsed, and sanitized after each use.
2. To prevent cross-contamination, kitchenware and food-contact surfaces of equipment must be washed, rinsed, and sanitized after each use and following any interruption of operations during which time contamination may have occurred.
3. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment must be washed, rinsed, and sanitized before each use with a different type of raw animal food or each time there is a change from working with raw foods and ready-to-eat foods.
4. The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens must be cleaned at least once a day. However, this does not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment must be kept free of encrusted grease deposits and other accumulated soil.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-50.1. Returnables - Cleaning and refilling.**

1. Except as specified in subsections 2 and 3, returned empty containers intended for cleaning and refilling with food must be cleaned and refilled in a regulated food processing plant.
2. A food-specific container for beverages may be refilled at a food establishment if:
  - a. Only a beverage that is not a potentially hazardous food;
  - b. The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
  - c. Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
  - d. The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and
  - e. The container is refilled by:
    - (1) An employee of the food establishment; or
    - (2) The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.
3. Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.
4. A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.
5. Except as specified in subsection 6, a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified in subsection 2.
6. Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process.

**History:** Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-51. Wiping cloths and working containers - Use limitation.**

1. Cloths used for wiping food spills on tableware, such as plates or bowls, being served to the consumer, must be clean, dry, and used for no other purpose.
2. Moist cloths used for wiping food spills on kitchenware and food-contact surfaces of equipment must be clean and rinsed frequently in one of the sanitizing solutions permitted in section 33-33-04-52 and used for no other purpose. These cloths must be stored in the sanitizing solution between uses.
3. Moist cloths used for cleaning nonfood-contact surfaces of equipment, such as counters, dining tabletops, and shelves, must be clean and rinsed as specified in subsection 2 and used for no other purpose. These cloths must be stored in the sanitizing solution between uses.
4. Working containers of sanitizing solutions for storage of in-use wiping cloths may be stored above the floor and used in a manner to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-52. Manual warewashing - Sink compartment requirements.**

1. A sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.
2. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink or a warewashing machine, alternative equipment as specified in subsection 3 shall be used.
3. Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:
  - a. High-pressure detergent sprayers;
  - b. Low-pressure or line-pressure spray detergent foamers;
  - c. Other task-specific cleaning equipment; or

- d. Brushes or other implements.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-52.1. Warewashing equipment - Cleaning frequency.** A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards shall be cleaned:

1. Before use;
2. Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and
3. If used, at least every twenty-four hours.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-52.2. Warewashing machines - Manufacturers' operating instructions.**

1. A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.
2. A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with the manufacturer's specifications.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-52.3. Warewashing sinks - Use limitations.**

1. A warewashing sink may not be used for handwashing as specified in section 33-33-04-29.
2. If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified in section 33-33-04-52.1 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food

shall be sanitized before and after using the sink to wash produce or thaw food.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-52.4. Warewashing equipment - Cleaning agents.** When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-52.5. Warewashing equipment - Clean solutions.** The wash, rinse, and sanitize solutions shall be maintained clean.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-52.6. Manual warewashing equipment - Wash solution temperature.** The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than forty-three degrees Celsius [110 degrees Fahrenheit] or the temperature specified on the cleaning agent manufacturer's label instructions.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-53. Mechanical warewashing equipment - Wash solution temperature.**

1. The temperature of the wash solution in spray-type warewashers that use hot water to sanitize may not be less than:
  - a. For a stationary rack, single-temperature machine, one hundred sixty-five degrees Fahrenheit [74 degrees Celsius];
  - b. For a stationary rack, dual temperature machine, one hundred fifty degrees Fahrenheit [66 degrees Celsius];
  - c. For a single-tank, conveyor, dual temperature machine, one hundred sixty degrees Fahrenheit [71 degrees Celsius]; or

- d. For a multi-tank, conveyor, multi-temperature machine, one hundred fifty degrees Fahrenheit [66 degrees Celsius].
2. The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than one hundred twenty degrees Fahrenheit [49 degrees Celsius].

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-53.1. Manual warewashing equipment - Hot water sanitization temperatures.** If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at seventy-seven degrees Celsius [171 degrees Fahrenheit] or above.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-53.2. Mechanical warewashing equipment - Hot water sanitization temperatures.**

1. Except as specified in subsection 2, in a mechanical operation the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than one hundred ninety-four degrees Fahrenheit [90 degrees Celsius], or less than:
  - a. For a stationary rack, single-temperature machine, one hundred sixty-five degrees Fahrenheit [74 degrees Celsius]; or
  - b. For all other machines, one hundred eighty degrees Fahrenheit [82 degrees Celsius].
2. The maximum temperature specified in subsection 1 does not apply to the high pressure and temperature systems with wand-type, handheld, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-53.3. Mechanical warewashing equipment - Sanitization pressure.** The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than one hundred kilopascals [15 pounds per square inch] or more than one hundred seventy kilopascals [25 pounds per

square inch] as measured in the waterline immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-53.4. Manual and mechanical warewashing equipment - Chemical sanitization - Temperature, pH, concentration, and hardness.**

A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified in subsection 3 of section 33-33-04-53.6 shall be listed in 21 CFR 178.1010 sanitizing solutions shall be used in accordance with the environmental protection agency-approved manufacturer's label use instructions, and shall be used as follows:

1. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

Minimum Concentration	Minimum Temperature	
	pH 10 or less °F [°C]	pH 8 or less °F [°C]
mg/L		
25	120 [49]	120 [49]
50	100 [38]	75 [24]
100	55 [13]	55 [13]

2. An iodine solution shall have a:
  - a. Minimum temperature of seventy-five degrees Fahrenheit [24 degrees Celsius];
  - b. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and
  - c. Concentration between twelve and one-half and twenty-five milligrams per liter;
3. A quaternary ammonium compound solution shall:
  - a. Have a minimum temperature of seventy-five degrees Fahrenheit [24 degrees Celsius];
  - b. Have a concentration as specified in 21 CFR 178.1010 sanitizing solutions and as indicated by the manufacturer's use directions included in the labeling; and
  - c. Be used only in water with five hundred milligrams per liter hardness or less or in water having a hardness no greater than specified by the manufacturer's label;



4. If another solution of a chemical specified in subsections 1 through 3 is used, the licenseholder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved; or
5. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-53.5. Warewashing equipment - Determining chemical sanitizer concentration.** Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-53.6. Hot water and chemical.** After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

1. Hot water manual operations by immersion for at least thirty seconds and as specified in section 33-33-04-53.1;
2. Hot water mechanical operations by being cycled through equipment that is set up as specified in sections 33-33-04-53.2 and 33-33-04-53.3 and achieving a utensil surface temperature of one hundred sixty degrees Fahrenheit [71 degrees Celsius] as measured by an irreversible registering temperature indicator; or
3. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified in section 33-33-04-53.4 by providing:
  - a. Except as specified under subdivision b, an exposure time of at least ten seconds for a chlorine solution specified in subsection 1 of section 33-33-04-53.4;
  - b. An exposure time of at least seven seconds for a chlorine solution of fifty milligrams per liter that has a pH of ten or less and a temperature of at least one hundred degrees Fahrenheit [38 degrees Celsius] or a pH of eight or less and a temperature of at least one hundred seventy-five degrees Fahrenheit [24 degrees Celsius];

- c. An exposure time of at least thirty seconds for other chemical sanitizing solutions; or
- d. An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in section 33-33-04-01.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20; 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-54. Drying.** After cleaning and sanitizing, equipment and utensils:

- 1. Shall be air dried or used after adequate draining as specified in 21 CFR 178.1010(a), sanitizing solutions, before contact with food; and
- 2. May not be cloth dried except that utensils that have been air dried may be polished with cloths that are maintained clean and dry.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-55. Handling of equipment and utensil storage.** Cleaned and sanitized equipment and utensils must be handled in a way that protects them from contamination. Equipment shall be reassembled so that food-contact surfaces are not contaminated. Spoons, knives, and forks may be touched only by their handles. Cups, glasses, bowls, plates, and similar items must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-56. Storage.**

- 1. Cleaned and sanitized utensils and equipment must be stored at least six inches [15.24 centimeters] above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment must also be protected from contamination. Equipment and utensils may not be placed under exposed sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
- 2. Utensils must be air dried before being stored or must be stored in a self-draining position.
- 3. Glasses and cups must be stored inverted. Other stored utensils must be covered or inverted, whenever practical. Facilities for the storage of

knives, forks, and spoons must be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations must protect these articles from contamination and present the handle of the utensil to the consumer.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-56.1. Preset tableware.** Tableware may be preset if:

1. It is protected from contamination by being wrapped, covered, or inverted;
2. It is exposed and unused settings are removed when a consumer is seated; or
3. It is exposed and unused settings are not removed when a consumer is seated, and are cleaned and sanitized before further use.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-57. Single-service articles.**

1. Single-service articles shall be stored at least six inches [15.24 centimeters] above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
2. Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.
3. Single-service knives, forks, and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed one's hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks, and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensil to the consumer.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-58. Prohibited storage areas.** The storage of food, equipment, utensils, or single-service articles in locker rooms, garbage rooms, under open stairwells, toilet rooms, or vestibules is prohibited.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-59. General water supplies.** Drinking water must be obtained from an approved source that:

1. Water from a public water system shall meet 40 CFR 141 - national primary drinking water regulations and state water quality standards.
2. Water from a noncommunity water system shall meet state drinking water quality standards.
3. Nondrinking water shall be used only for nonculinary purposes such as air-conditioning, nonfood equipment cooling, fire protection, and irrigation.
4. Except when used as specified in subsections 2 and 3, water from a noncommunity water system shall be sampled and tested at least annually and as required by state water quality regulations.
5. The most recent sample report for the noncommunity water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.
6. The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment.
7. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.
8. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-59.1. System flushing and disinfection.** A drinking water system shall be flushed and disinfected before being placed in service after

construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-60. Transportation.** All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed-water system. Both of these systems shall be constructed and operated according to law.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-61. Bottled water.** Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - processing and bottling of bottled drinking water and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original container.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-62. Water under pressure.** Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-62.1. Water reservoir of fogging devices.**

1. A reservoir that is used to supply water to a device such as a produce fogger must be:
  - a. Maintained in accordance with manufacturer's specifications; and
  - b. Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection 2 whichever is more stringent.
2. Cleaning procedures must include at least the following steps and must be conducted at least once a week:
  - a. Draining and complete disassembly of the water and aerosol contact parts;

- b. Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
- c. Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
- d. Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least fifty MG/L (mg/L) hypochlorite solution.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-63. Steam.** Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-64. General sewage.** All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed and operated according to law. Nonwater-carried sewage disposal facilities are prohibited, except as permitted by sections 33-33-04-125 and 33-33-04-132 (pertaining to temporary food establishments), or as permitted by this department in remote areas or because of special situations.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-65. General plumbing.** Plumbing shall be sized, installed, and maintained according to law. A plumbing system shall be repaired according to law and maintained in good repair. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might become contaminated.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-66. Nonpotable water system.** Repealed effective August 1, 2003.

**33-33-04-67. Backflow.** The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against

backflow and back siphonage at all fixtures and equipment where an airgap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-68. Grease traps.** If used, grease traps shall be located to be easily cleaned.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-69. Garbage grinders.** If used, garbage grinders shall be installed and maintained according to law.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-70. Drains.** Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located within five feet [1.52 meters] of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-71. Toilet facility installation.** Toilet facilities shall be installed according to law, shall be the number required by law, shall be conveniently located, and shall be accessible to employees at all times.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-72. Toilet design.** Toilets and urinals shall be designed to be easily cleaned.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-73. Toilet rooms.** Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing, solid doors, which shall be closed except during cleaning or maintenance unless otherwise provided by law except that this requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-74. Toilet fixtures.** Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-75. Handsink facility installation.**

1. Handsinks shall be at least the number required by law, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation and utensil-washing areas.
2. Handsinks shall be accessible to employees at all times.
3. Handsinks may not be used for purposes other than handwashing.
4. Handsinks shall also be located in or immediately adjacent to toilet rooms. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.
5. If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handsinks in a food establishment that has at least one handsink.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-76. Handsink faucets.** Each handsink shall be provided with hot and cold water tempered to at least one hundred degrees Fahrenheit [ 38 degrees Celsius] by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water



for at least fifteen seconds without the need to reactivate the faucet. Use of steam-mixing valves is prohibited.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-77. Handsink supplies.** A supply of hand-cleansing soap or detergent shall be available at each handsink. A supply of disposable towels, clean continuous towel system, or a hand-drying device providing heated air shall be conveniently located near each handsink. The use of common towels is prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handsinks.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-78. Handsink maintenance.** Handsinks, soap dispensers, hand-drying devices, and all related fixtures shall be kept clean and in good repair.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-79. Garbage and refuse containers.**

1. Garbage and refuse shall be kept in durable, easily cleanable, insect and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers or for storage inside the food establishment.
2. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.
3. Containers stored outside the establishment, and dumpsters, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.
4. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.
5. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing

containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-80. Storage.**

1. Garbage and refuse on the premises shall be stored in a manner which makes them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging materials not containing garbage or food wastes need not be stored in covered containers.
2. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate.
3. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters, and compactor systems located outside shall be stored on or above a smooth surface or nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean, maintained in good repair, and sloped to drain.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-81. Disposal.**

1. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.
2. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration which prevents the escape of particulate matter in accordance with law. Areas around incineration facilities shall be clean and orderly.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-82. General insect and rodent control.** Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as

to prevent the harborage or feeding of insects or rodents. Devices that are used to electrocute flying insects must be designed to have "escape-resistant" trays. Devices that are used to electrocute flying insects and that may impel insects or insect fragments or to trap insects by adherence must be installed so that:

1. The devices are not located over a food preparation area.
2. Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.

Dead or trapped birds, insects, rodents, and other pests must be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests. Rodent bait must be contained in covered, tamper-resistant bait stations. A tracking powder pesticide may not be used in a food establishment. If used, a nontoxic tracking powder such as talcum or flour, may not contaminate food, equipment, utensils, linens, and single-service articles.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-83. Openings.**

1. Except as specified in subsections 2, 3, 4, and 5, outer openings of a food establishment shall be protected against the entry of insects and rodents by:
  - a. Filling or closing holes and other gaps along floors, walls, and ceilings;
  - b. Closed, tight-fitting windows; and
  - c. Solid, self-closing, tight-fitting doors.
2. Subsection 1 does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.
3. Exterior doors used as exits need not be self-closing if they are:
  - a. Solid and tight-fitting;
  - b. Designed for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and

- c. Limited-use so they are not used for entrance or exit from the building or purposes other than the designated emergency exit use.
- 4. Except as specified in subsections 2 and 5, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified in subsection 1, the openings shall be protected against the entry of insects and rodents by:
  - a. Sixteen mesh to one inch [16 mesh to 25.4 millimeters] screens;
  - b. Properly designed and installed air curtains to control flying insects; or
  - c. Other effective means.
- 5. Subsection 4 does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-84. Construction and maintenance of floor construction.**

Floors and floor coverings of all food preparation, food storage, and utensil-washing areas, walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms, and vestibules shall be constructed of smooth durable material, such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-85. Floor carpeting.** Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food preparation, equipment-washing, and utensil-washing areas where it would be exposed to large amounts of grease and water, in food storage areas, refuse storage areas, and toilet room areas where urinals or toilet fixtures are located.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-86. Prohibited floor covering.** The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-87. Floor drains.** Properly installed, trapped floor drains shall be provided in floors that are water-flushed for cleaning, or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors shall be constructed only of sealed concrete, terrazzo, ceramic tile, or similar materials, and shall be graded to drain.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-88. Mats and duckboards.** Mats and duckboards shall be of nonabsorbent, grease-resistant materials and of such size, design, and construction as to be removable and easily cleanable. Duckboards shall not be used as storage racks.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-89. Floor junctures.** In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile, or similar flooring materials, and where water-flush cleaning methods are used, the junctures between walls and floors shall not present an open seam of more than one thirty-second of an inch [1 millimeter].

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-90. Utility line installation.** Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-91. Wall and ceiling maintenance.** Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair. Perimeter walls and roofs of a food establishment shall effectively protect

the establishment from the weather and the entry of insects, rodents, and other animals.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-92. Construction.** The walls, including nonsupporting partitions, wall coverings, and the ceilings of walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface. The physical facilities shall be maintained in good repair.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-93. Exposed construction.** Studs, joists, and rafters shall not be exposed in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules and in areas subject to moisture. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-94. Utility line installation.** Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-95. Attachments.** Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-96. Covering material installation.** Wall and ceiling covering materials shall be attached and sealed as to be easily cleaned.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-97. General cleaning physical facilities.** The physical facilities shall be cleaned as often as necessary to keep them clean. Cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with brooms.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-98. Utility sinks.** In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mopwater or similar liquid wastes. The use of lavatories, utensil or equipment-washing, or food preparation sinks for this purpose is prohibited in new or extensively remodeled establishments.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-99. General lighting.**

1. Permanently fixed artificial light sources must be installed to provide at least fifty foot-candles of light on all food preparation surfaces where equipment such as knives, slicers, grinders, and saws are used.
2. Permanently fixed artificial light sources must be installed to provide, at a distance of thirty inches [76.2 centimeters] from the floor.
  - a. At least twenty foot-candles of light at a distance of thirty inches [75 centimeters] above the floor in utensil and equipment storage areas and in lavatory and toilet areas; and
  - b. At least ten foot-candles of light at a distance of thirty inches [75 centimeters] above the floor in walk-in refrigerating units, dry

food storage areas, and in all other areas, including dining areas during cleaning operations.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-100. Protective shielding.**

1. Except as specified in subsection 2, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food, clean equipment, utensils, and linens, or unwrapped single-service and single-use articles.
2. Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages if:
  - a. The integrity of the packages cannot be affected by broken glass falling into them; and
  - b. The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.
3. Infrared or other heat lamps must be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-101. General ventilation.** All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge. Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-102. Special ventilation.**

1. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.



2. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-103. Dressing rooms or areas.** If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-104. Locker area.** Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing, their personal care items, and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms, in food storage rooms, or areas containing only completely packaged food or packaged single-service articles.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-105. Poisonous or toxic materials permitted.** There shall be present in food establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents. This section does not apply to packaged poisonous or toxic materials that are for retail sale.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-106. Labeling of materials.** Containers of poisonous or toxic materials shall bear a legible manufacturer's label. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies must be clearly and individually identified with the common name of the material.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-107. Storage of materials.**

1. Poisonous or toxic materials consist of the following four categories:
  - a. Pesticides.
  - b. Detergents, sanitizers, and related cleaning or drying agents.
  - c. Substances necessary for the operation and maintenance of the establishment such as nonfood-grade lubricants and personal care items that may be deleterious to health.
  - d. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
2. Each of the four categories set forth in subsection 1 must be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall be separated by spacing or partitioning and shall not be stored above food, food equipment, utensils, or single-service articles, except that this requirement does not prohibit the convenient location of detergents or sanitizers at utensil or dishwashing stations.
3. Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, food equipment, utensils, linens, and single-service and single-use articles by:
  - a. Separating the poisonous or toxic materials by spacing or partitioning; and
  - b. Locating the poisonous or toxic materials in an area that is not above food, food equipment, utensils, linens, and single-service or single-use articles.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-108. Use of materials.**

1. Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.

2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, in a way that constitutes a hazard to employees or other persons, or in a way other than in full compliance with the manufacturer's labeling.
3. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.
4. Drying agents used in conjunction with sanitization may contain only components that are listed in 21 Code of Federal Regulations.
5. Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 - chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-109. Personal medications.** Only those medicines necessary for the health of employees are allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale. Medicines for employees' use must be labeled as specified in section 33-33-04-106 and located to prevent the contamination of food, equipment, utensils, linens, and single-service articles. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines and located so they are inaccessible to children.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-110. First-aid supplies.** First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-111. General premises.**

1. Food establishments and all property used in connection with their operations shall be kept free of litter.
2. The walking and driving surfaces of all exterior areas of food establishments shall be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance

and minimize dust. These surfaces shall be graded to prevent pooling and shall be kept free of litter.

3. Only articles necessary for the operation and maintenance of the food establishment shall be stored on the premises. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used shall not be stored on the premises.
4. The traffic of unnecessary persons through the food preparation and utensil-washing areas is prohibited.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-112. Living areas.** No operations of a food establishment shall be conducted in any room used as living or sleeping quarters. Food operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-113. Laundry facilities.**

1. Laundry facilities in a food establishment shall be used only for the washing and drying of linens, cloths, uniforms, and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.
2. Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.
3. If on-premises laundering is limited to wiping cloths intended to be used moist, or air dried in a location and manner that prevents contamination of food, equipment, utensils, linens, and the wiping cloths, a mechanical washer and dryer need not be provided. The wiping cloths may be laundered in a warewashing or food preparation sink that is cleaned before use, throughout the day at a frequency to prevent recontamination, or if used, at least every twenty-four hours.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-114. Linen and clothes storage.**

1. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.
2. Soiled clothes and linens shall be stored in nonabsorbent containers or washable laundry bags until removed for laundering.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-115. Cleaning equipment storage.** Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner. After use, mops shall be placed in a position that allows them to air dry without soiling walls, equipment, or supplies.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-116. Prohibiting animals.**

1. Except as specified in subsections 2 and 3, live animals may not be allowed on the premises of a food establishment.
2. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:
  - a. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
  - b. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
  - c. In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and
  - d. Pets in the common dining areas of group residences at times other than during meals if:

- (1) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
  - (2) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
  - (3) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.
- e. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.
3. Live or dead fish bait must be stored so that contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.
  4. Food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in subsection 2.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-117. General mobile food service.** Mobile food units or pushcarts shall comply with the requirements of this chapter, except as otherwise provided in this section and in section 33-33-04-118. The department may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this chapter relating to physical facilities, except those requirements of sections 33-33-04-120, 33-33-04-121, 33-33-04-122, 33-33-04-123, and 33-33-04-124, which may not be waived.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-118. General mobile food service - Restricted operations.** Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with requirements of this chapter pertaining to the necessity of water and sewage systems or those

requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary. However, frankfurters may be prepared and served from these units or pushcarts.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-119. Single-service articles.** Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-120. Water system.** A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of this chapter. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this chapter. A hose used for conveying drinking water from a water tank must have a smooth interior surface, be of food grade material, and, if not permanently attached, be clearly and durably identified as to its use. A water tank, pump, and hoses used for conveying drinking water may be used for no other purpose.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-121. Waste retention.** If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that has a capacity of at least fifteen percent or larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections of the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-122. Base of commissary operations.**

1. Mobile food units or pushcarts shall operate out of a commissary or other fixed food establishment and shall report at least daily to all such locations for all supplies and cleaning and servicing operations.
2. The commissary or other fixed food establishments used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of this section.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-123. Serving area and operations.**

1. A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area there shall be a location provided for the flushing and drainage of liquid wastes which is separate from the locations provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or pushcart, or where mobile food units do not contain waste retention tanks.
2. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean, and graded to drain.
3. The construction of the walls and ceilings of the servicing area is exempted from the provision of sections 33-33-04-91 through 33-33-04-96.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **33-33-04-124. Servicing operations.**

1. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.
2. The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid



waste shall be discharged into a sanitary sewerage disposal system in accordance with section 33-33-04-64.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-125. Temporary food establishment.** A temporary food establishment shall comply with the requirements of this chapter, except as otherwise provided in this section. The department may impose additional requirements to protect against health hazards, related to the conduct of the temporary food establishments, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this chapter relating to temporary food establishments.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-126. Temporary food establishment - Restricted operations.**

1. This section is applicable whenever a temporary food establishment is permitted, under the provisions of section 33-33-04-125 to operate without complying with all the requirements.
2. Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish, is prohibited. This prohibition does not apply to any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of this chapter, is packaged in individual servings, is stored at a temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below or at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above in facilities meeting the requirements of this chapter, and is served directly in the unopened container in which it was packaged.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-127. Ice.** Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of this chapter. The ice shall be obtained only in chipped, crushed, or cubed form and packaged in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture.

The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

#### **33-33-04-128. Equipment.**

1. Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.
2. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-129. Single-service articles.** All temporary food establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-130. Water.** Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-131. Wet storage.** Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-132. Waste.** All sewage, including liquid waste, shall be disposed of according to law.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-133. Handwashing.** A convenient handwashing facility shall be available for employee handwashing. At a minimum, this facility shall consist of warm running water, soap, and individual paper towels. If approved, when food exposure is limited and handwashing sinks are not conveniently available, such as in some mobile or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-134. Floors.** Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept in good repair. However, dirt or gravel, when graded to drain, may be used as subflooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings, or other suitable materials effectively treated to control dust.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-135. Walls and ceilings of food preparation areas.**

1. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors, or windows shall be at least sixteen mesh to the inch [2.54 centimeters].
2. Counter-service openings shall be no larger than necessary for the particular operation conducted. These openings must be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings shall be kept closed, except when in actual use.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-136. Inspection report form FD 2420.** Repealed effective July 1, 1997.

**33-33-04-137. Submission of plans.** Whenever a food establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling, or conversion must be submitted to the department for review and approval before construction, remodeling, or conversion is begun. The plans and specifications must indicate the intended menu, anticipated volume of food to be stored, prepared, and sold or served, proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the types and models of proposed fixed equipment and facilities. The department shall approve the plans and specifications if they meet the requirements of this chapter. No food establishment may be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the department.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-138. Preoperational inspection.** Whenever plans and specifications are required by section 33-33-04-137 to be submitted to the department, the department shall inspect the food establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this chapter.

**History:** Effective August 1, 1988; amended effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-138.1. Routine inspections.** The department shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this code and the establishment's potential as a vector of foodborne illness evaluating:

1. Past performance, for nonconformance with code or HACCP plan requirements that are critical;
2. Past performance, for numerous or repeat violations of code or HACCP plan requirements that are noncritical;
3. Past performance, for complaints investigated and found to be valid;
4. The hazards associated with the particular foods that are prepared, stored, or served;
5. The type of operation, including the methods and extent of food storage, preparation, and service;

6. The number of people served; and
7. Whether the population served is a highly susceptible population.

**History:** Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-139. Modifications and waivers.** The department may grant a variance by modifying or waiving the requirements of this code if in the opinion of the department a health hazard will not result from the variance. If a variance is granted, the department shall retain the information specified in section 33-33-04-140 in its records for the food establishment.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-140. Documentation of proposed variance and justification.** Before a variance from a requirement of this code is approved by the department, the information that must be provided by the person requesting the variance and retained by the department's file on the food establishment includes:

1. A statement of the proposed variance of the code requirement citing relevant code section numbers;
2. An analysis of the rationale for how the potential public health hazards addressed by the relevant code sections will be alternatively addressed by the proposal; and
3. An HACCP plan if required as specified in subsection 1 of section 33-33-04-142 which includes the information specified in section 33-33-04-143 so it is relevant to the variance requested.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-141. Conformance with approved procedures.** If the department grants a variance as specified in section 33-33-04-139, or an HACCP plan is otherwise required as specified in section 33-33-04-142, the licenseholder shall:

1. Comply with the HACCP plans and procedures that are submitted and approved as specified in section 33-33-04-143 as a basis for the modification or waiver.

2. Maintain and provide to the department, upon request, records specified in subsection 3 of section 33-33-04-143 which demonstrate that the following are routinely employed:
  - a. Procedures for monitoring critical control points.
  - b. Monitoring the critical control points.
  - c. Verification of the effectiveness of an operation or process.
  - d. Necessary corrective actions if there is failure at a critical control point.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-142. When an HACCP plan is required.**

1. Before engaging in an activity that requires an HACCP plan, a license applicant or licenseholder shall submit to the department for approval a properly prepared HACCP plan as specified under section 33-33-04-143 and the relevant provisions of this code if:
  - a. Submission of an HACCP plan is required according to law;
  - b. A variance is required as specified under section 33-33-04-18.1; or
  - c. The department determines that a food preparation or processing method requires a variance based on a plan submittal specified under section 33-33-04-137, an inspectional finding, or a variance request.
2. A license applicant or licenseholder must have a properly prepared HACCP plan as specified under section 33-33-04-18.1.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

**33-33-04-143. Contents of an HACCP plan.** For a food establishment that is required under section 33-33-04-142 to have an HACCP plan, the plan and specifications must indicate:

1. A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department;

2. A flow diagram by specific food or category type identifying critical control points and providing information on the following:
  - a. Ingredients, materials, and equipment used in the preparation of that food; and
  - b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
3. A statement of standard operating procedures for the plan under consideration including clearly identifying:
  - a. Each critical control point;
  - b. The critical limits for each critical control point;
  - c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;
  - d. The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
  - e. Action to be taken by the person in charge if the critical limits for each critical control point are not met; and
  - f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
4. Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

**Law Implemented:** NDCC 19-02.1-09

### **Consumer Advisories**

Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry or shellfish reduces the risk of foodborne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.



Appendix B-1		
Exclusions and Restrictions for Food Employees and Applicants		
Health Status	Facilities Serving Highly Susceptible Population	Facilities Not Serving Highly Susceptible Population
1. Diagnosed with illness due to <b>Salmonella Typhi</b> , <b>Shigella</b> spp., Shiga toxin-producing <b>E. coli</b> , or hepatitis A virus	Exclude 33-33-04-28(1)	Exclude 33-33-04-28(1)
2. Experiencing a symptom listed in 33-33-04-28(2)	Restrict 33-33-04-28.1(2)	Restrict 33-33-04-28.1(2)
3. Experiencing a symptom listed in 33-33-04-28(2)(a) and meets a high-risk condition* of 33-33-04-28(4)(a-c)	Exclude 33-33-04-28.1(3)(a)	Restrict 33-33-04-28.1(2)(a)
4. Asymptomatic but stools positive for <b>S. Typhi</b> , <b>Shigella</b> spp., or Shiga-producing <b>E. coli</b>	Exclude 33-33-04-28.1(3)(b)	Restrict 33-33-04-28.1(2)(b)
5. Past illness from <b>Salmonella Typhi</b> within the last three months	Exclude 33-33-04-28.1(3)(c)	No Restrictions
6. Past illness from <b>Shigella</b> spp. or Shiga toxin-producing <b>E. coli</b> within the last month	Exclude 33-33-04-28.1(3)(d)	No Restrictions
7. Onset of jaundice within the last seven days	Exclude 33-33-04-28.1(4)(a)	Exclude 33-33-04-28.1(4)(a)
*High-risk conditions apply only to exclusions under this subparagraph.		

**Removal of Exclusions and Restrictions for Food Employees and Applicants**

<b>Health Status 33-33-04-28 &amp; 33-33-04-28.1</b>	<b>Facilities Serving Highly Susceptible Population 33-33-04-28.2</b>	<b>Facilities Not Serving Highly Susceptible Population 33-33-04-28.2</b>
1. Diagnosed with illness due to <b>Salmonella Typhi, Shigella</b> spp., Shiga toxin-producing <b>E. coli</b> , or hepatitis A virus 33-33-04-28(1)	1. RA Approval + 2. Doctor* - Stool-free or blood-free or symptom-free 33-33-04-28.2(1)	1. RA Approval + 2. Doctor* - Stool-free or blood-free or symptom-free 33-33-04-28.2(1)(b)
2. Experiencing a symptom listed in 33-33-04-28(2)	1. No illness results + no symptoms or  2. Suspect cause of illness + no symptoms + Doctor* - Stool- or blood-free or  3. Doctor* - Noninfectious condition 33-33-04-28.2(2)(a)	1. No illness results + no symptoms or  2. Suspect cause of illness + no symptoms + Doctor* - Stool- or blood-free or  3. Doctor* - Noninfectious condition 33-33-04-28.2(2)(a)
3. Experiencing a symptom listed in 33-33-04-28(2)(a) and meets a high-risk condition 33-33-04-28(4)(a-c) 33-33-04-28.1(3)(a)	1. Doctor* - Stools- or blood-free or  2. No jaundice per 33-33-04-28.2(4)  3. 33-33-04-28.1(3)(a) Noninfectious condition 33-33-04-28.2(3)	1. No illness results + no symptoms or  2. Suspect cause of illness + no symptoms + Doctor* - Stool- or blood-free or  3. Doctor* - Noninfectious condition 33-33-04-28.2(2)(a)

4. Asymptomatic by stools positive for <b>S. Typhi</b> , <b>Shigella</b> spp., or Shiga toxin-producing <b>E. coli</b> 33-33-04-28.1(2)(b) and (3)(b)	Doctor* - Stools-free 33-33-04-28.2(3)	Doctor* - Stools-free 33-33-04-28.2(2)(b)
5. Past illness from <b>Salmonella Typhi</b> within the last three months 33-33-04-28(3)	Doctor* - Stools-free 33-33-04-28.2(3)	NA
6. Past illness from <b>Shigella</b> spp., or Shiga toxin-producing <b>E. coli</b> within last month 33-33-04-28(3)	Doctor* - Stools-free 33-33-04-28.2(3)	NA
7. Onset of jaundice within last seven days 33-33-04-28.1(4)(a)	1. No illness results + Doctor* - Blood-free or Doctor* - No jaundice or  2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)	1. No illness results + Doctor* - Blood-free or Doctor* - No jaundice or  2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)
8. Onset of jaundice more than seven days ago 33-33-04-28.1(4)(b)	1. No illness results + Doctor* - Blood-free or Doctor* - No jaundice or  2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)	1. No illness results + Doctor* - Blood-free or Doctor* - No jaundice or  2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)
*Where "doctor" is indicated, nurse practitioner or physician assistant, if allowed by law, may provide documentation.		